

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	*
	*
V	*
	*
CARL MARTIN	* CRIMINAL FILE NO. 19-157

JURY TRIAL  
Friday, June 10, 2022  
Burlington, Vermont

BEFORE:

THE HONORABLE WILLIAM K. SESSIONS III  
Senior District Judge

APPEARANCES:

WENDY L. FULLER, ESQ., and ANDREW C. GILMAN, ESQ.,  
Assistant United States Attorneys, Federal  
Building, Burlington, Vermont; Attorneys for the  
United States

CHANDLER W. MATSON, ESQ., The Law Offices of  
Chandler W. Matson, 125 Mountain Road, Stowe,  
Vermont; Attorney for Defendant Carl Martin

ANNE NICHOLS PIERCE  
United States District Court Reporter (ret'd.)  
*fortherecordinvermont@gmail.com*

I N D E X

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1 FRIDAY, JUNE 10, 2022

2 (The following was held in open court with the jury  
3 present at 9:07 a.m.)

4 THE COURT: Good morning. Welcome back.

5 COURTROOM DEPUTY: Your Honor, the matter  
6 before the Court is criminal case number 19-CR-157,  
7 defendant number one, United States of America versus  
8 Carl Martin. Present for the government are Assistant  
9 United States Attorneys Wendy Fuller and Andrew Gilman.  
10 Present with the defendant is Chandler Matson.

11 And we are here for the fifth day of a jury trial.

12 THE COURT: All right, good morning and  
13 welcome back. Has anyone spoken to you about the case  
14 or have you spoken among yourselves about the case or  
15 have you learned anything about this case from outside  
16 of the courtroom?

17 (The jury all indicate in the negative.)

18 THE COURT: All right. Thank you. Everyone  
19 is shaking their heads right and left.

20 And I think we're ready to proceed. Government  
21 ready to make its summation?

22 MS. FULLER: Yes, I am, your Honor. Or we  
23 are.

24 Ready, willing, and able. Those are three words I  
25 hope you keep in mind throughout these closing

1 statements and in your deliberations. Carl Martin, well  
2 before he met ATF Agent Brian Wood, was ready, willing,  
3 and able to sell cocaine and possess firearms. No one  
4 pressured Carl Martin to deal cocaine. No one pressured  
5 him to possess firearms. He did that all on his own.  
6 And for that, ladies and gentlemen, you should return a  
7 verdict of guilty on all counts.

8 Now, I just want to talk to you briefly about the  
9 charges. You will hear the judge instruct you that  
10 there's a six-count indictment. The first count is a  
11 conspiracy count. The judge will tell you what a  
12 conspiracy means. But the simplest way to explain it is  
13 it's simply an illegal agreement between two or more  
14 people. It's an illegal agreement, illegal agreement to  
15 commit an unlawful act. These parties need to come to a  
16 mutual understanding of what that act is.

17 And in this case, Carl Martin, along with Mirnes,  
18 Bryan Correa Santiago, conspired, they agreed, to  
19 distribute cocaine between the fall of 2018 and October  
20 23rd, 2019.

21 The second charge in this count is a possession of  
22 a firearm in furtherance of a drug trafficking crime.  
23 That charge relates to Mr. Martin's trade of cocaine  
24 with the undercover agent for a firearm. It's that  
25 simple.

1           And then the remaining counts, Counts 3, 4, 5 and  
2           6, all relate to Mr. Martin's distribution of cocaine on  
3           each of the controlled transactions that you heard.

4           Just to be clear, Mr. Martin doesn't need to  
5           actually physically hand the drugs in each of those  
6           transactions to be guilty of that crime. And the judge  
7           will instruct you of that. If Mr. Martin helps in that  
8           distribution, if he helps bring about that distribution,  
9           he is guilty of that crime.

10          I want to start with talking to you about what's  
11          not disputed.

12                 LIZA LABOMBARD: Can you take that off for a  
13          second?

14                 COURTROOM DEPUTY: Sure.

15                 LIZA LABOMBARD: Can you try it again?

16                 COURTROOM DEPUTY: Yes.

17                 MS. FULLER: We appear to be having a --

18                 THE COURT: Technological problem.

19                 MS. FULLER: -- technological problem.

20                 COURTROOM DEPUTY: I can --

21                 LIZA LABOMBARD: Yeah, the screens are a  
22          little different.

23                 MR. GILMAN: There it is.

24                 MS. FULLER: Okay. Don't go away.

25          All right. Let's talk about what's not in dispute.

1 First, it is not disputed that on August 26th, September  
2 5th, September 20th, and October 23rd, 2019, controlled  
3 transactions occurred in which cocaine was distributed,  
4 and in that last transaction, a firearm was traded for  
5 cocaine. That's not disputed. It's not disputed that  
6 those transactions occurred.

7 It's also not disputed that Mr. Martin was present  
8 for each of the transactions on August 26th, September  
9 5th, September 20th, and August 23rd.

10 It's further not disputed that there was cocaine in  
11 the substances purchased on August 26th, September 5th,  
12 September 20th, and October 23rd.

13 Now, it's been suggested to you that the cell phone  
14 used in this case either didn't belong to Mr. Martin or  
15 was being used by somebody else in addition to Mr.  
16 Martin. Did you see any evidence of that? Aside from  
17 the claim regarding the word "broski," did you see any  
18 evidence of that? There isn't any evidence that anybody  
19 used his phone, and I don't think you want me to go back  
20 over the text messages in which it indicates that Mr.  
21 Martin also used the word "broski." It's -- it's his  
22 phone.

23 Brian Wood testified that when he would send Carl  
24 Martin a message, Carl Martin would show up with  
25 cocaine. It's kind of like asking a family member to

1 get a gallon of milk at the store, and they come home  
2 and they have that gallon of milk. It's the same  
3 concept. It's not complicated. It can't be seriously  
4 disputed that this was Martin's cell phone.

5 And to the extent there's any lingering question  
6 about whether this is Mr. Martin's cell phone, Mr.  
7 Martin actually tells us it's his cell phone.  
8 Government's Exhibit 112. There's an outgoing message  
9 to Byrd. That's Mr. Martin talking to Byrd. He says,  
10 "What's good?" She says, "Who's this?" He say, "Dre."

11 And if that's not enough, then Mr. Martin sends a  
12 photo of himself to Byrd. Governments 112B. It's Mr.  
13 Martin's cell phone. Can't be seriously disputed that  
14 it's not.

15 And if it's not certainly disputed that it's Mr.  
16 Martin's cell phone, those first three things still  
17 apply, but the last also applies. And that is that Mr.  
18 Martin arranged each of the deals on August 26th,  
19 September 5th, September 20th, and August -- October  
20 23rd. That put -- that puts Mr. Martin squarely  
21 accountable for the cocaine that was distributed on each  
22 of those days.

23 So just to review. We'll walk through each of the  
24 controlled buys and talk about some of the evidence that  
25 is corroborating the fact that those buys occurred and

1 that Mr. Martin was involved in them. First let's start  
2 on the August 26th, 2019, controlled buy.

3 Do you remember by this time Mr. Martin had twice  
4 sold fake drugs? Not twice. On multiple occasions had  
5 sold fake drugs to law enforcement. I will talk about  
6 that in a bit, but I suggest to you that that's a side  
7 show in this case. Mr. Martin's a drug dealer. People  
8 sell fake drugs. It's not a legitimate business. He  
9 doesn't care if he sells fake drugs, because what he  
10 wants is money, and whether you sell fake product or  
11 real product, you still get the money.

12 So before this deal on August 26th, he sold some  
13 fake drugs. Brian Wood was complaining about the  
14 quality of the cocaine. Remember that? And in response  
15 to entice Brian Wood to buy cocaine, Mr. Martin sends  
16 him this, a video of cocaine. "Look. This is the  
17 product I'm selling you. It's good." It's an  
18 advertisement. If there's any inducement in this text  
19 message, it's Mr. Martin trying to induce Brian Wood to  
20 keep buying his product.

21 Then there's text messages from Martin to -- to  
22 Brian Wood arranging the deal. Mirnes and Martin show  
23 up in Mirnes's Chevy Equinox at the Price Chopper on  
24 Williston Road. Mirnes comes to the window. You've  
25 seen that video. It's not Mirnes just telling you what



1 happened in the video. You have seen it. You've heard  
2 it. There's talk about taking a trip to Philly. Folks,  
3 there's only one person in this room, potentially  
4 there's only one person sitting at the defense table who  
5 is from Philly. It's Carl Martin. Mirnes isn't from  
6 Philly. He's from Bosnia.

7 So there's talk about taking a trip to Philly for  
8 better product. There's reference to Carl Martin. And  
9 Mirnes says, "Hey, I'm just a middleman."

10 Now, there was some suggestion to you that Mirnes's  
11 testimony about just being the middleman was, you know,  
12 Mirnes didn't want to get caught. Well, think about  
13 that for a second. Mirnes has no idea that this is  
14 being recorded by law enforcement. He thinks Brian Wood  
15 is an actual buyer of cocaine. What motivation is  
16 Mirnes going to have to claim he is a middleman when  
17 he's not when nobody's looking? That's the time that  
18 Mirnes is going to tell the truth.

19 In that deal, Mirnes hands the cocaine to Brian,  
20 Brian gives the money to Mirnes, Mirnes gets back in the  
21 car with Martin, and they drive away.

22 Then we have the September 5th controlled buy.  
23 Again, more text messages with Martin arranging the  
24 deal. And you could read all of them. You will have  
25 every single text message between Brian Wood and Mr.

1 Martin. You can see exactly what was said.

2 But there's more because there's also text messages  
3 between Mirnes and Martin about meeting the CI. Martin  
4 says to Chango -- who is Mirnes, remember -- "He's on  
5 the way," referring to Brian Wood. Mirnes writes back,  
6 "So about 20 minutes until we there, I'm guessing?"  
7 Martin says, "Probably." And then Mirnes says, "On my  
8 way to you."

9 Okay. "On my way to you," because Mirnes is Mr.  
10 Martin's chauffeur. All of the drugs and all of the  
11 deals in this case, Mr. Martin had Mirnes drive him. If  
12 Mirnes was really the supplier of these drugs, does it  
13 make any sense to you that Mirnes would be driving  
14 Martin, and Martin's just along for the ride? Seems to  
15 me it would be the other way around.

16 Now, I suggest to you that Mr. Martin was using  
17 Mirnes for a ride, as a chauffeur, as a person to bring  
18 him wherever he needed to go and to distribute his drugs  
19 to whoever Martin was distributing to.

20 In that controlled buy, Mirnes and Martin arrive in  
21 the Equinox again at the Price Chopper. This is  
22 surveilled by law enforcement. Independent law  
23 enforcement officers see this. Mirnes comes to the UC's  
24 window. There's more talk about taking a trip, a trip  
25 down to Philadelphia, to get more high-quality product.

1 Mirnes hands the cocaine to Brian Wood. Brian Wood  
2 gives the money to Mirnes in a coffee cup. Mirnes gets  
3 back in the car and drives away with Mr. Martin.

4 September 20th, 2019. This is the third controlled  
5 transaction. Again, more texts between Martin and Brian  
6 Wood. You can read them. They corroborate exactly what  
7 happened here. But by this time on September 20th, you  
8 remember during the early part of September there was a  
9 dispute over the quality of the cocaine. There had been  
10 a dispute over the quality of the cocaine almost this  
11 entire time. And the UC was complaining about the  
12 quality because you learned that in this time frame, ATF  
13 learned for the first time that some of the substances  
14 that Mr. Martin had been selling wasn't real.

15 And so Mr. Martin was reacting to that, in  
16 Exhibit 26, and he says, "I have some good news. One of  
17 my brothers on his way from Philly right now with some  
18 raw fish that you can cook yourself if needed." Only  
19 thing is he wants one more. Again, Mr. Martin  
20 advertising the cocaine that he potentially has for  
21 sale. Why? Because he is trying to entice Brian Wood  
22 to buy more.

23 Again, Martin texts his chauffeur, Mirnes, for a  
24 ride. Government's Exhibit 97. Martin says, "Yo,  
25 thought you was taking me may." Martin -- or Mirnes,

1       joking with Martin, says, "Who's this?" But they  
2       ultimately show up at the deal in Martin's Equinox.  
3       This deal is at the McDonald's, a place where you had  
4       seen other controlled purchases had happened.

5               This time the UC gets into the Equinox. He gets  
6       into the Equinox, and there is a hand-to-hand  
7       transaction directly with Mr. Martin.

8               And in this case, you will remember, because of the  
9       quality of the cocaine, because it was so bad, because  
10      ATF was not going to buy anymore fake product from  
11      Martin, Martin enticed the UC to buy -- to take a little  
12      bit more cocaine on the front.

13              And you heard that word, about what fronting is.  
14      Fronting is when it's essentially a consignment deal.  
15      Martin is giving the UC cocaine so he can try it out, so  
16      he can make sure it's good. He doesn't need to pay for  
17      it unless he is able to turn around and resell it. It's  
18      another aspect of this case which shows that it's Martin  
19      attempting to get Brian Wood's business. Certainly not  
20      the other way around.

21              And we know this because in the video you heard  
22      Martin tell the CI, quote, That's why I'm giving you  
23      that, to gain trust back.

24              Now, the last transaction. There's a series of  
25      controlled buys before the October 23rd, 2019,

1 controlled transaction. You'll remember there's an  
2 ongoing dispute about quantity. ATF and Brian Wood are  
3 saying, "Hey, I want to sort of put the brakes on this."  
4 They're trying to put some distance between them and Mr.  
5 Martin. But Mr. Martin doesn't give up.

6 Exhibit 34, on October 6th, he says, "Got the best  
7 fish right now. Just a little bit more." Brian Wood  
8 doesn't bite on that, so on October 16th, he writes  
9 back, "What's the word?" Brian Wood doesn't bite on  
10 that.

11 So on October 17th, he says, "I have the real deal  
12 holyfield." We have heard that before, right? That's  
13 what he told Bryan Correa Santiago he was telling to all  
14 of his people. Another -- another example of Mr. Martin  
15 trying to get business. He is trying to drum it up. "I  
16 got the real stuff. It's good. You gotta get it."

17 October 21st, Brian Wood still not been interested,  
18 and he says, "Just let me know the number of fish."

19 And then on -- later on October 23rd, Brian Wood  
20 says to him, "Yo. Red says you're looking for  
21 something. Let me know if I can help." We know Red is  
22 John Latimer, the CI in this case.

23 I want you to focus pretty closely on the words  
24 that Brian Wood used. I'm going to suggest to you that  
25 there's a lot he didn't say right here, right? He says,

1 "Yo, Red says you're looking for something. Let me know  
2 if I can help." A person who is not criminally minded  
3 might take that to mean or would likely take that to  
4 mean, depending on where you are in your life, looking  
5 for something. Maybe you're looking for a couch. Maybe  
6 you're looking for a twin bed for your daughter.

7 If you are not criminally minded, this could mean  
8 all sorts of things, right? That door was left wide  
9 open for Mr. Martin to interpret it any way he wanted  
10 to. It doesn't say, "Hey, I hear you're looking for a  
11 firearm. I have a firearm, specifically a .357, to give  
12 to you." It doesn't say that. It specifically doesn't  
13 say that. So that there could be all sorts of space for  
14 Mr. Martin to fill any way he decided to fill it.

15 And Mr. Martin decided to fill it by saying, "Yeah.  
16 Like a .357. Has to be clean." You'll see in the  
17 evidence in this case that is the first time a specific  
18 firearm is referenced by anyone, and it's the defendant.

19 Following up on those texts, on the day of the  
20 actual controlled transaction, there's texts between  
21 Martin and Mirnes about the deal. Exhibit 97. And we  
22 see exactly what is going to happen.

23 Martin writes to Chango, who is Mirnes: "I'm  
24 supposed to drop off two to the white boy." We know  
25 that's Brian Wood. Later messages that morning in the

1 same general time frame, he says to Mirnes, "I can give  
2 you something out of it." Probably, because, again, Mr.  
3 Mirnes is his chauffeur. "Okay. No problem, broski.  
4 What time?" And, "Where you at?"

5 Then Martin and Mirnes go to pick up the cocaine.  
6 Exhibit 120. And how do we know that? Because we saw  
7 the messages on Bryan Correa's text messages with Carl  
8 Martin, Bryan Correa being the supplier of Mr. Martin.  
9 And there's an incoming text message from Bryan Poker,  
10 who we know is Bryan Correa Santiago, and it says, "You  
11 almost here?" Martin says, "Beltline," "K." Martin  
12 says, "I'm outside."

13 Now, you remember I asked the agent about the  
14 timing of these messages right here? That message was  
15 sent at 11:50 a.m. on October 23rd, 2019. You also  
16 heard testimony that the deal with Brian Wood happened  
17 less than an hour after this text message was sent.

18 Folks, these controlled transactions, the  
19 government has proved them. We have corroborated them.  
20 You can see all the text messages. You can see the  
21 video. You can see the information from Carl Martin's  
22 phone. There can't be a serious dispute that those --  
23 that those transactions happened the way that the  
24 government's evidence indicate that they happened.

25 There can't be a dispute that Mr. Martin traded

1 cocaine for this firearm, Government's Exhibit 117. He  
2 didn't pay for it. The only thing he gave over for this  
3 was cocaine.

4 So I want to talk to you a little bit about the  
5 conspiracy indictment. We -- I mentioned it earlier,  
6 but it's worth noting again that this is just an illegal  
7 agreement, and as you will see in the Court's jury  
8 charge to you, it doesn't need to be a formal agreement.  
9 These people didn't meet in a conference room somewhere  
10 and write it down on a piece of paper and sign at the  
11 bottom. It doesn't have to be that formal. What it is  
12 is just a mutual understanding between people.

13 And in this case, Bryan Correa Santiago, Mr.  
14 Martin, and Mr. Julardzija had a mutual understanding to  
15 sell cocaine. And they started in 2018, and it  
16 continued until October 23rd, 2019. How do we know  
17 this? Much of the same evidence I just described to you  
18 is how we know: Text messages. Testimony of Agent  
19 Wood. Video. The audio. But we also have the  
20 testimony of Mirnes and Daniel Lathrop.

21 And I want to talk to you a minute about them,  
22 because their testimony supports what you saw in the  
23 other evidence. And I expect that you are going to  
24 hear -- you already have heard in opening -- I believe  
25 the quote was, "You will not hear from a witness in this



1 case that does not have a reason to be here, that does  
2 not have a bias."

3 It is true that Mirnes Julardziga, Daniel Lathrop,  
4 and Peter Nguyen have agreements with the government.  
5 And as the Court will instruct you, that is absolutely  
6 fair to consider. It is part of your credibility  
7 determination, because you get to determine whether  
8 someone is credible or not. It's part of determining  
9 credibility. So think about that. Think about their  
10 motivation for being here.

11 But there's other things that also go into  
12 someone's credibility determination: the way they  
13 testify; how they answer questions; how they appear to  
14 you, their body language; whether they're able to answer  
15 questions or whether they're confused or can't remember.  
16 Think about all those things. All perfectly fair things  
17 to consider when you're thinking about whether someone's  
18 credible.

19 There's also another piece to credibility, though,  
20 that I don't think you are going to hear from the  
21 defense. That piece to credibility is whether there's  
22 other evidence supporting what they say, because you  
23 don't just judge credibility in a vacuum. It's not just  
24 somebody's motivation for being here. Somebody can have  
25 a pretty significant motivation for being here, and I'm

1 sure that will be suggested to you. But ask yourselves:  
2 Did what they say match the evidence in this case? Did  
3 Mirnes's testimony match Brian Wood's? Did Daniel  
4 Lathrop's testimony match Mirnes's? And did both of  
5 their testimony match the physical evidence that we have  
6 in the case? Because if it does, that's a pretty strong  
7 indication that these people walked in here and were not  
8 influenced by whatever bias they had.

9 One of the things that was suggested to you in  
10 opening pretty strongly is that law enforcement  
11 pressured the defendant into this. I think you heard  
12 the words, "He's not a drug dealer. He's not. It was  
13 the government's pressure that got him here." Let's  
14 look at some of that pressure.

15 Go to the next slide.

16 Government's Exhibit 118. You know what this is?  
17 This is the first ever text between Carl Martin and  
18 Brian Wood. First ever. Wasn't Brian Wood to reach out  
19 to Carl Martin. It was Carl Martin reaching out to  
20 Brian Wood. "If you need something, let me know." Is  
21 that pressure?

22 How about the next one, Exhibit 129. August 13th:  
23 "When you wanna have lunch? That way I have it prepared  
24 for you." No deal is set up at this time, folks. No  
25 deal. But it's Mr. Martin wanting to get ahead of the

1 game. Wanting to make sure he's there. Is that  
2 pressure?

3 August 15th: "What time you thinking tomorrow?"  
4 They hadn't yet set up a deal, but he's still wanting  
5 him to set one up. He wants lunch with him.

6 More texts, Exhibit 3. August 20th, he is checking  
7 in to see how everything was. Brian Wood writes back,  
8 "Going all right, man."

9 And then Carl Martin writes back, "That's good.  
10 Let me know when you're trying to eat some lunch."  
11 Again, no deal set up. Pushing, want to make that next  
12 sale, and it's not coming from Brian Wood.

13 August 21st: "That fish came in." Again, "Let me  
14 know when you wanna have lunch."

15 August 22nd: I'll give you a good deal.

16 Sunday: "I have lunch prepared. Let me know when  
17 you're ready to eat." Over and over and over again.

18 And it continues. August 29th: "How's everything  
19 going?

20 "Good, my man."

21 "That's good."

22 "Yeah, man. Good meal."

23 "Let me know when you wanna have lunch again."

24 "Yeah, bud. Will do. Thanks."

25 September 2nd: No communication since the 29th,

1 and out of the blue Carl Martin writes to the UC and  
2 says, "What's good, my boy? When you wanna do lunch?"

3 September 3rd, later in the day: "Just let me  
4 know. How many fish you looking for for lunch?"

5 That's not pressure from the government.

6 Martin was also pushing quantity in a way that  
7 Brian Wood was not. Exhibit 129, August 10th: "6500  
8 for five onion?"

9 And Brian Wood's response tells you everything you  
10 need to know about government pressure or not: "I like  
11 that number, my man, but lemme know how fast that two  
12 can go to see if I can get some bigger mouths to feed."

13 Up until this 6500, five-ounces text, they hadn't  
14 come close to five ounces. They were at two. So the  
15 person suggesting more quantities was Mr. Martin.

16 And then Exhibit 25, a couple days later: "How  
17 much you willing to take? All seven?" Seven? They  
18 were less than five.

19 And then the final text: "You want all 10 or just  
20 seven?" They went from two ounces in a controlled buy  
21 to five to seven to 10, all initiated by Mr. Martin.

22 Then we have the time period that we've already  
23 talked about in which ATF had learned that some of the  
24 substance they had purchased did not contain real  
25 cocaine. You remember that? And there was a period of

1 time in which the UC wanted to sort of push back and  
2 say, "No, we gotta slow this down. Not going to buy  
3 anymore substances from him until we can figure it out."

4 Exhibit 25. This is right before they find out  
5 that some of the substances are not real. "Trying to  
6 get some lunch this week."

7 September 13th: "What's the word for the day?"

8 September 16th: Now we're in the heat of it.  
9 Brian Wood has not been in contact with Mr. Martin.  
10 "Can you meet at Price Chopper next to McDonald's in  
11 Colchester where we meet the first time? My guy? Let  
12 me know so I can make a move. Everything good??"

13 "Can you meet at Price Chopper next to McDonald's  
14 in Colchester where we meet the first time?" He's  
15 panicked.

16 Later, "On my way to you." Brian says, "I'll hit  
17 you up later if the phones are working."

18 "Can I come to you? Want me to come to you?" Does  
19 that look like pressure from Brian Wood? It looks like  
20 somebody who is panicked about the quality of their  
21 product and they're nervous that they're going to lose a  
22 customer. That's what it looks like because that's what  
23 it is.

24 Later on September 16th: "Give me an address.  
25 I'll come to you. I'm trying to call you. Or

1 McDonald's work for you?"

2 September 16th: "What's the word? What's good?"

3 And then on September 17th: "If you want, I could  
4 swing by -- I could swing by you after -- after I get  
5 off work in an hour and bring you a basketball to try  
6 out." So now he's offering him more product on the  
7 front.

8 Mr. Martin was ready, he was willing, he was able  
9 to sell drugs. He is not an unwary innocent. He was  
10 dealing drugs long before Brian Wood contacted him. He  
11 saw Brian Wood as a good customer. He wanted to keep  
12 him. That's what all these text messages are about.

13 How else do we know that Carl Martin was dealing in  
14 cocaine?

15 If you go back a couple slides, please.

16 These are text messages that Mr. Martin had with  
17 other customers, because Mr. Martin's a drug dealer and  
18 he deals drugs to people more than Brian Wood. He deals  
19 to Malik. "You or trigger wanna get rid of an onion?  
20 If so, how much?"

21 He deals to Larry. "I need a G till tomorrow night  
22 if you can trust me."

23 Carl's response, "Yeah, I got you."

24 He deals to Jake. "I got. You want?"

25 "What kinda ice cream you eating?" says Jake.

1 "I have soft ice cream right now." Powder cocaine.  
2 He deals to Byrd. "I could make some if you know  
3 people who like that girl."

4 Byrd writes, "Are you talking about snow white or  
5 are you talking about my friend Molly?"

6 He says, "Snow white."

7 This is all indication that Carl Martin was  
8 previously predisposed to sell cocaine. He's not only  
9 selling to the government; he's selling to other people.  
10 Those texts, those people -- Mirnes, Lathrop, person  
11 named Ashley Hojon (phonetic), Bevin, Byrd, Jake, Larry,  
12 Malik, these are all customers of Carl Martin.

13 If the government pressured him into selling coke,  
14 why is he selling to other people? That's  
15 predisposition, folks. That's sale of drugs to other  
16 people. It's predisposition. Mr. Martin was selling  
17 cocaine long before Brian Wood entered the picture.

18 Go forward with the texts, please.

19 So the last area I want to cover is Mr. Martin and  
20 guns. Now, we know from the evidence that Mr. Martin  
21 possessed a firearm in February of 2018 in connection  
22 with the Nectar's shooting. This is that firearm,  
23 Government's Exhibit 101. He admits he possessed it.  
24 Law enforcement took it directly from him. This is a  
25 person who was interested in firearms at least as far

1 back as February 2018.

2 This is the firearm he possessed in Colchester, a  
3 year later, in February 2019. Mr. Martin has his first  
4 firearm taken from him, so he needed another one, and  
5 this is it. This too ended up in the possession of law  
6 enforcement.

7 Undeterred, Mr. Martin needed more firearms.  
8 Remember those texts about him going on a mission?  
9 Exhibit 120, he is writing to Brian: "Lots of people  
10 owe me." You know what that's a reference to? Cocaine.  
11 It's a reference to his customers owing him money. "I'm  
12 ready to go on a mission." You know what a mission is.  
13 It's a robbery.

14 Next series of text messages, Exhibit 97, he is  
15 writing to Chango: "I need to hold Lisa for the night."  
16 Lisa's a firearm. He's on the hunt. He's looking.

17 Mirnes writes back: "No, I can't, broski. She's  
18 MIA," because Mirnes knows it's not a good idea to give  
19 Carl Martin a firearm.

20 He writes to Chango: "I'm going on a mission  
21 tonight," same thing he just told Bryan Correa Santiago.  
22 "What's up with the rifle?"

23 "So if I can't have Lisa, I can take the rifle. I  
24 need something for the mission."

25 More texts with Chango: "Just got BNB to find a



1 hammer." He's looking.

2 Mirnes says, "I got the air one, look real as  
3 shit."

4 He's like, "At this point I'll take anything.

5 "Okay, I'll let you have that one."

6 More messages with Bryan Correa Santiago. He's not  
7 getting any hammers from Mirnes, so he asks Bryan Correa  
8 Santiago for a hammer.

9 And all of these texts, folks, this is before  
10 the .357 text. This is before Brian Wood says to him,  
11 "Hey, I hear you're looking for something." Remember  
12 that text where Brian left it wide open for Martin to  
13 fill the space? These texts are before that. Mr.  
14 Martin was predisposed to seek out a firearm and possess  
15 it. These texts prove it.

16 Then we get to the attempted robbery, which is only  
17 to show his continued possession of firearms. The first  
18 text he exchanged with Bryan Poker: "Can't get into the  
19 apartment."

20 Bryan's like, "Yeah, it's hard."

21 He wants to know how many digits, remember, because  
22 there's a key pad that you need to get into the  
23 apartment. "I don't know."

24 And he said, "You never saw the code, fool?"

25 He writes later to Bryan Correa Santiago, right

1 around the time that the robbery is happening, according  
2 to Peter Nguyen. They're going to the place on Williams  
3 Street because the attempted victim in the robbery was  
4 still working his food cart.

5 And what do we know happens next? From Mr.  
6 Martin's cell phone, he sends Bryan Correa Santiago this  
7 series of pictures. The first one. The second one.  
8 The third one. That third one's all you need to know  
9 about Mr. Martin and guns.

10 Bryan Correa Santiago's response to those messages:  
11 This (indicating).

12 His next response: "Hope it goes well."

13 His last response: "Shhhhh. Don't tell anybody."

14 I've said this repeatedly now, but by the time  
15 Brian Wood and ATF became involved with Mr. Martin, he'd  
16 long been selling drugs, poorly. He is not a  
17 sophisticated drug dealer. He is not very good at it.  
18 He waters down his product so it's not real. But he's  
19 still a drug dealer because he intersperses those drugs  
20 with real drugs. He is a poor drug dealer, not  
21 effective, but he's a drug dealer, and he was a drug  
22 dealer before law enforcement became involved with him.

23 He's also someone who regularly possessed firearms,  
24 and he needed no suggestion from law enforcement to  
25 continue to possess them.

1           Ladies and gentlemen, I thank you for your time.  
2           Thank you for listening to me. The government asks that  
3           you please return a verdict of guilty on all counts.

4           THE COURT: All right? Defense want to make a  
5           closing argument?

6           MR. MATSON: I do. Your Honor, may we  
7           approach first?

8           THE COURT: Yes.

9           MR. MATSON: Thank you, your Honor.  
10          (The following was held at the bench.)

11          MR. MATSON: Judge, I didn't want to interrupt  
12          Attorney Fuller's argument, but there was one -- Carl is  
13          from Philly. That was testimony that I objected to. It  
14          was allowed in to show the course of the government  
15          investigation, not for the truth of the matter asserted.

16          I don't think there's any credible evidence that  
17          Carl is from Philly. That's a pretty important point in  
18          this case, and I ask the jury to be instructed to  
19          disregard it.

20          THE COURT: Okay. What's the evidence of him  
21          being from Philly?

22          MS. FULLER: The agents testified in their  
23          investigation --

24          THE COURT: Pardon me?

25          MS. FULLER: In the course of the

1 investigation, they learned he was from Philly. He was  
2 originally from Jamaica; there was testimony about that.  
3 I believe it was Agent Brown or -- I believe Agent Brown  
4 testified in the course of his investigation he was --

5 THE COURT: So is there testimony from one of  
6 the agents in the record --

7 MS. FULLER: Yes.

8 THE COURT: -- that they said he was from  
9 Philly?

10 MS. FULLER: Yes.

11 MR. MATSON: That's okay. If that was the  
12 evidence, I objected to it because I thought it was  
13 hearsay.

14 THE COURT: Okay. There is evidence of it,  
15 so -- on that point, so objection overruled.

16 MR. MATSON: Thank you, Judge.

17 (The following was held in open court.)

18 MR. MATSON: Ladies and gentlemen of the jury,  
19 we have definitely learned the government's better with  
20 technology. That we know.

21 I appreciate everyone, your time, taking a week of  
22 your lives to listen to a criminal case. I know it is  
23 incredibly inconvenient for you, and you have lives to  
24 live. I hope you know that everybody in this room  
25 thinks that it's incredibly important. It is a

1       cornerstone of our government. Its citizens, not the  
2       government, citizens decide criminal cases.

3               Enough about that, but I sincerely do want you to  
4       know how much it is appreciated.

5               Ladies and gentlemen, this case, look at the  
6       indictment. This is a drug case, no matter what the  
7       government tries to spin it into, no matter what the  
8       government's evidence might otherwise suggest. It is a  
9       drug case. Look at Count 1. It's a drug conspiracy.  
10      Count 2. That firearm offense that they talk about, the  
11      alleged transaction on October 23rd, that has its  
12      underpinning in drug distribution. They all are drug  
13      distribution cases.

14              The problem, Carl Martin is not a drug dealer.  
15      That's the problem with the government's case  
16      fundamentally. Drug dealers don't sell fake drugs. The  
17      direct evidence that you have in this case is that Carl  
18      Martin absolutely on October 5th, 2018, delivered to  
19      John Latimer fake drugs. He did so again on October  
20      8th, and then again in July of 2019. Those are fake  
21      drugs.

22              Drug dealers don't sell fake drugs because fake  
23      drugs, probably not get you a repeat customer. You sell  
24      fake anything, you're going out of business. Drug  
25      dealers sell real drugs. Fake drug dealers sell fake

1 drugs. Carl Martin is not a drug dealer.

2 What do we know about Carl Martin? And we heard  
3 from Mirnes. We heard from several other witnesses.  
4 Carl Martin was a janitor. Carl Martin's afraid. A lot  
5 of valid reasons. He's, you know, afraid to drive.  
6 It's true, he doesn't drive himself. He relied on  
7 others to get to work, transport him and his kids and  
8 his family. That's Carl Martin.

9 And we also learned that Carl Martin is open and  
10 honest and really accessible during police interviews.  
11 Because we heard, unrelated to these charges, that Carl  
12 Martin in 2018 and 2019 was interviewed by law  
13 enforcement three times, and he talked to them on three  
14 occasions. Told them, "I lawfully possessed firearms."  
15 He said that. "I've lawfully possessed firearms." He  
16 freely admitted it, and indeed he did lawfully possess  
17 firearms, which begs the question why somebody could  
18 lawfully possess a firearm would be dealing with  
19 somebody like John Latimer for a firearm or Agent Wood  
20 for a firearm. Why not go to a gun store where there's  
21 no risk, right? Just doesn't make sense, the  
22 government's case, if he can lawfully possess firearms.

23 If you are selling fake drugs, then why are you a  
24 drug dealer who's illegally getting firearms? Why would  
25 you do any of those things? Because Carl Martin's not a

1 drug dealer, and he could lawfully possess firearms.  
2 That's the evidence in this case. Direct evidence.

3 I would say the only thing that could be proven  
4 beyond a reasonable doubt is that Carl Martin sold those  
5 fake drugs. That's true.

6 Where does the story really begin? Does it start  
7 with Nectar's? Not really. It starts with John Latimer  
8 in October of 2018. Actually, he first met with law  
9 enforcement in September of 2018. John Latimer was  
10 working with Trooper Prack. He was trying to engage in  
11 otherwise illegal transactions in order to get himself  
12 consideration to get out from underneath his own  
13 criminal behavior.

14 It's dirty business, but it happens. Confidential  
15 informants are a necessary part of law enforcement. I  
16 concede that. But that's John Latimer.

17 In September of 2018, John Latimer says, "I was  
18 buying drugs from Carl Martin in 2017." There's no  
19 police reports to back that up. There's no  
20 corroboration for what John Latimer is saying there. He  
21 just says it. And then they go test it. How do they  
22 test it? They set up those two controlled purchases I  
23 talked about before, the ones where Carl gives fake  
24 drugs.

25 So when they test it, the theory fails. Many, many

1 months later, the theory's tested again, July 2019.  
2 They don't stop. And, again, the theory fails because  
3 Carl gives fake drugs, because Carl's not a drug dealer.

4 Something else happens too. June 25th and June  
5 28th of 2019, again, John Latimer's theory is being  
6 tested, and he is going to set up two more drug deals  
7 with Carl Martin. Problem is, Carl Martin's not there.  
8 Carl Martin's not even present.

9 He says, "I'm buying drugs from Carl Martin" in  
10 June of 2019. He goes and sets out to prove it. Carl  
11 Martin's not there. And don't think they weren't  
12 looking, because after those first two failed drug deals  
13 in June of 2019, we now have lots more police doing  
14 surveillance, looking to say, Where's Carl Martin?  
15 Where's his involvement?

16 They don't find it, and they don't find him. You  
17 heard evidence, they had a helicopter in the sky June  
18 28th doing aerial surveillance all around the  
19 neighborhood looking for Carl Martin, and they didn't  
20 find him. You know why? Because Carl Martin's not a  
21 drug dealer.

22 Before I go further, I have to talk about this  
23 notion of entrapment. That's the legal definition of  
24 it. The judge instructs you on the law after we're all  
25 done here, but entrapment is the idea that government



1 can't introduce a crime to an innocent person, get them  
2 to commit that crime, and then charge them with it.

3 There's two elements -- there are two elements to it.

4 So if you find there's some credible evidence that  
5 it was the government who was instigating these  
6 crimes -- and I think that's not even close -- between  
7 Latimer and Trooper Prack working with Latimer, and  
8 Agent Brown working with Latimer, and the fake texts,  
9 the ruse -- and it is an investigation based on lies  
10 meant to trick, meant to, as much as they fought me on  
11 it, apply pressure, pressure to get real drugs -- so I  
12 think that first element is easy for you -- then you  
13 have to move on to the next element of entrapment.

14 So if government instigates a crime, then what the  
15 government has to prove beyond a reasonable doubt,  
16 beyond a reasonable doubt, is that that person was  
17 otherwise predisposed to commit those crimes. Now,  
18 let's look at what they offered you for predisposition.  
19 And now maybe you understand Nectar's.

20 They offered you the Nectar's incident to say he is  
21 predisposed for firearms. He lawfully possessed the  
22 firearm. He is not on trial for lawfully possessing  
23 firearms, by the way. Predisposition evidence in this  
24 case has to relate to the actual crimes for which he is  
25 charged.

1           What happened at Nectar's? You heard it. Carl  
2 spoke to the police. The police showed up at his house.  
3 He let them right in. His kids were home. Two police  
4 officers came into his apartment, and what did they  
5 find? Someone who is willing to answer their questions,  
6 someone who readily told them, "I lawfully possessed a  
7 firearm that night. Someone threatened to kill my  
8 brother." I think stopping there for just a second.

9           Who else is Carl Martin? Look, Carl Martin's  
10 dealing with some things and dealt with some things that  
11 most of us probably can't understand, hopefully never  
12 will. He's just out at a bar with his brother. Someone  
13 approaches him and says, I'm going to kill your brother.  
14 And they've got the weapon to prove it. The bartenders  
15 take the weapon from that guy, and then give it back. I  
16 think for any of us, that would be horrifying.

17           Carl waits outside. When the bar empties, Carl  
18 punches that guy in the face. You might judge that;  
19 it's fine. Carl had a firearm, and he chose not to use  
20 it. He chose not to use a firearm. He chose to do the  
21 safe thing. Again, guessing most people haven't been in  
22 that circumstance. Hopefully no one ever is. But Carl  
23 made the best choices he could and the safest choices he  
24 could there. And he tells all this to the police.

25           But why are we really talking about the Nectar's

1 thing anyway? Because when the police were inside his  
2 house, they found no evidence of drug dealing. They  
3 didn't give him warning and saying we're coming. It was  
4 an announced visit, and Carl says, "You can go up to the  
5 closet in my bedroom and you can retrieve that firearm."  
6 They didn't take the firearm. Carl gave it to them.  
7 Carl said test it.

8 They went into the closet with him. They went  
9 through his house. You don't think the police know what  
10 drug dealing looks like? Scales, baggies, money,  
11 cocaine, drugs. They don't find it. So their own  
12 predisposition evidence tells you he's not predisposed  
13 to be a drug dealer.

14 What else do they offer? Look, I heard Mr. Nguyen,  
15 and I honestly can't tell you that I understand what  
16 that was even about. They knocked on his door. They  
17 left. And they never did anything more about it. They  
18 went to the apartment building, they didn't get in, and  
19 no one does anything about it. Okay, predisposed and  
20 knocking on door and leaving, I don't know.

21 I asked Mr. Nguyen what actually happened, and he  
22 told me. I don't know where it fits into  
23 predisposition, but I can tell you, again, that's the  
24 only way you can consider it? This is a drug offense,  
25 and that had nothing to do with drug dealing. It had

1 nothing to do with Carl Martin's predisposition to be a  
2 drug dealer because he is not a drug dealer.

3 Finally, I want to talk about the February 2019  
4 firearm that the police recovered. It's one of these.  
5 I don't want to touch it.

6 So February 2019, what does that tell us about  
7 predisposition as well? It tells us that once again  
8 Carl Martin's predisposed in accommodating an interview,  
9 because the police are -- something happened with Dennis  
10 Martin again, Carl's brother. The police get a search  
11 warrant for Carl's house. They show up. They search  
12 the house. They put Carl in a car. Carl talks to 'em.  
13 He said, "Yeah, I lawfully possessed a firearm." I  
14 mean, he's scared. Still scared. That Nectar's  
15 incident still scared him. And he tells the police, "I  
16 possessed a firearm." He was allowed to. He lawfully  
17 possessed it. He didn't hide the fact. He didn't try  
18 to keep them out of the house. They went in the house.  
19 They searched the house. And you heard Officer Gonyaw  
20 say they did not find any evidence of drug dealing or  
21 drug distribution or scales, baggies, you name it.

22 Their predisposition evidence tells you Carl is not  
23 a drug dealer. They want to say there's no pressure in  
24 this case, fine. But that simply is not true. I  
25 confronted those witnesses about their text messages.

1 Why are you -- Trooper Pratt, Agent Brown, Why are you  
2 pretending to be mad? Because they're trying to push  
3 real drugs. Fake drugs doesn't do it, right? That's  
4 what we're on trial for. They're trying to push it to  
5 real drugs. That predisposition evidence tells you --  
6 again, look at it and consider it only for that  
7 purpose -- it informs the opposite conclusion that Carl  
8 Martin was not predisposed.

9 Let's return to the government's actual showing of  
10 drug dealing. Ladies and gentleman -- and I mean gentle  
11 "man," because there's one of you. That's why we say  
12 "members of the jury."

13 Members of the jury, I can tell you that every  
14 assumption the government and the government's witnesses  
15 made has cut against Carl Martin even when everyone is  
16 looking him right in the face saying, I'm the drug  
17 dealer.

18 Mirnes went to the window of the undercover agent's  
19 car and said, "We do this deal. It's only going to work  
20 if you give me the money and I go to Philly." And  
21 still, Agent Wood says, "Carl Martin gave me those  
22 drugs. Carl Martin wanted to go to Philly."

23 Every assumption they make goes against Carl  
24 Martin. But the opposite is true in this room. The  
25 presumption of innocence, which is the only fair way to

1 do this, goes to Carl Martin and every other person  
2 that's accused of a federal indictment. And it's only  
3 overcome unless and until you find the government proves  
4 its case beyond a reasonable doubt. Every time you hear  
5 an assumption out of the government's case or from their  
6 evidence, their witnesses, get rid of it. There are no  
7 assumptions. This is proof beyond a reasonable doubt.

8 And let's talk about that a little bit, because  
9 when it suits their theory, they're fine with the  
10 testimony. When it doesn't, they just turns things on  
11 its head. Look at those text messages. They say, Oh, I  
12 know it was Carl Martin. Agent Wood, I asked him  
13 directly, "How do you know it was Carl Martin on the  
14 other side of those text messages?" Well, "Because I  
15 texted them and Carl Martin would show up." Not true.  
16 Not true.

17 Mirnes showed up, so use the logic. Agent Wood's  
18 own logic. I text someone, so and so shows up. Fine.  
19 Text someone, Mirnes shows up. And, Mirnes delivered  
20 the goods. Those text messages are Mirnes.

21 As the government just said, it's Mirnes delivering  
22 the milk, and that's how you know you reached a family  
23 member to get you milk. But they don't want to talk  
24 about that. It's never Mirnes. It's always Carl  
25 Martin, because this was an investigation of Carl Martin

1 and they always viewed it through that prism that it's  
2 Carl Martin.

3 They testified that, well, drug dealers use a lot  
4 of different phone numbers, a lot of different phones,  
5 and they're always trying to obfuscate. That's fine. I  
6 get that. I believe it. I believe a drug dealer would  
7 not want to be caught. So, if Carl Martin knows what's  
8 on that phone, he knows all that stuff is on it, why  
9 does he say, Here, take the phone and go ahead and  
10 search it?

11 It's just not possible that someone else was using  
12 that phone that was taken? You heard that there are  
13 apps that can just put a phone number onto a phone and  
14 give it a phone number that's not associated with that  
15 phone. You have heard that drug dealers use different  
16 phones and different numbers. But it's just not  
17 possible that somebody else was using that phone?

18 Why would Carl give it to 'em and say go ahead and  
19 search it. Same reason he said go ahead and search and  
20 look up in the closet and get that firearm. Carl didn't  
21 think he was doing anything wrong, because Carl's not a  
22 drug dealer.

23 Let's talk about Mirnes for a second because,  
24 again, you can be sure that Mirnes was there, that  
25 Mirnes did deliver drugs, and sometimes himself fake

1 drugs. Carl and Mirnes are friends, and I -- I don't  
2 doubt that Mirnes was going through a hard time. I can  
3 believe that. But they were friends, and they trusted  
4 each other, and not -- in a friendly way, right? Mirnes  
5 said, "Sometimes Carl was scared home alone and he would  
6 borrow my gun" because he would be home alone and he had  
7 his kids and he was scared, scared for his safety.

8 Again, there are clearly some things going on  
9 around Carl, especially with his family. Carl's a  
10 scared guy. That's fine. But he trusted Mirnes and  
11 Mirnes trusted Carl.

12 The fact is, in some of those texts I showed you,  
13 in September of 2019, we know that Mirnes was having  
14 money problems. And we know that Mirnes was afraid of  
15 being caught. And when you have money problems, you're  
16 not buying drugs. You're selling them because you're  
17 looking to solve the problem. Maybe he does drugs too.  
18 But buying drugs doesn't make money. Selling drugs  
19 makes money.

20 And when you think you're going to get caught, you  
21 gotta push somebody out in front of the bus. When  
22 Mirnes says to that undercover, "The only way this works  
23 is if you give me the money directly and I go to  
24 Philly" -- that's what he says to the undercover; that  
25 is a quote -- he catches himself, and instantly that's



1 when he says, "I'm just the middleman." It's his deal.

2 When I asked Mirnes, "What did you mean by 'the  
3 only way this works is you give me the money,'" he  
4 said -- Mirnes said, "Oh, by 'me,' I meant Carl." You  
5 see what I mean? Like everything gets turned on its  
6 head until it's Carl. But that doesn't cut it in here.  
7 You can't just say things. You can't just assume  
8 things. It is proof beyond a reasonable doubt.

9 The one thing I did believe Mirnes, in those text  
10 messages, he said, "You never know when the devil will  
11 come, Carl." Well, the devil comes when your back's  
12 against the wall and you make the wrong decision to try  
13 and save yourself.

14 That's the government's case. Those are the  
15 government's witnesses. All their backs are against the  
16 wall. Mirnes knows it. He knows that a drug dealer's  
17 going to do worse at sentencing than a drug user. So  
18 Mirnes constantly says, "I'm a drug user." His back's  
19 against the wall and that's what he is going to say.

20 Daniel Lathrop wants to get his pilot license.  
21 Daniel Lathrop says, "Mirnes is my drug dealer. Carl  
22 was introduced as his buddy." Daniel Lathrop's back's  
23 against the law.

24 Look, undercover work, confidential informants,  
25 it's a tough business. I get that. I get that these

1 agents have to do something that's fairly unbelievable,  
2 which is to convince people that Agent Wood is a drug  
3 dealer. You heard him talk. He is polite. He is  
4 well-mannered, well-spoken. Seemed like a genuine  
5 person who really wants to do a good job. And then you  
6 see his texts. You see how far he has to go to create  
7 the appearance that he is dangerous, he is a drug  
8 dealer. And if you get him behind on his money, you're  
9 in trouble, and you better make it right, and making it  
10 right means real drugs, none of this fake stuff.

11 If Carl Martin's a drug dealer, why did it take all  
12 that? If he is predisposed to do things that they say  
13 he is doing, why did they have to do all that? Show me  
14 the witness whose job it was not to investigate Carl  
15 Martin but something else. Show me the witness that  
16 doesn't have drug charges themselves, isn't being paid  
17 to investigate Carl Martin, isn't try to work off their  
18 own criminal charges. Show me the outside evidence from  
19 just someone who is disinterested.

20 It shouldn't be that hard, if Carl Martin is  
21 predisposed to committing this crime, to show me where  
22 independently he was committing these crimes. But when  
23 they investigated him independently, i.e., things that  
24 weren't related to this investigation -- the Nectar's,  
25 the thing with Dennis Martin -- they found the opposite.

1 No evidence of drug dealing. If Carl Martin's a drug  
2 dealer, you have seen drug dealing in those other  
3 instances.

4 The government says there's no government pressure  
5 in this case. I started out this case by saying this  
6 case is about government pressure. Judge for  
7 yourselves. Look at what we saw in this room: the  
8 binders, the paperwork, the digital evidence, the  
9 massive agent involvement, the confidential informants,  
10 the payments.

11 There is massive government pressure in this case,  
12 and it took every single bit of it to make Carl look  
13 like a drug dealer. And if you find, again, that Carl  
14 did anything wrong in this case -- and I don't know if  
15 you can beyond a reasonable doubt, but if you find --  
16 and I will respect your decision no matter what;  
17 obviously we all will. If you find he did anything  
18 wrong, ask yourselves, Was he predisposed to do that?  
19 Did he do any of that stuff before the government got  
20 involved, before all that time in government pressure?  
21 Because if you can't say yes, you have to acquit Mr.  
22 Martin.

23 Predisposition has to be proved beyond a reasonable  
24 doubt. It took all that time and all that money and all  
25 that pressure to make it look like Carl Martin was a

1 drug dealer. I want you to look at the evidence  
2 honestly, openly. Use your common sense. That's why we  
3 have civilians look at criminal cases and make those  
4 decisions, because common sense is your best tool in  
5 sorting through this evidence. And when you do that,  
6 I'm going to ask you to return a verdict of not guilty  
7 on behalf of Mr. Martin.

8 Thank you very much.

9 THE COURT: All right. The government offer  
10 rebuttal?

11 MS. FULLER: Yes, your Honor.

12 Mr. Matson has tried to describe to you or convince  
13 you that Carl Martin's not a drug dealer. And he spent  
14 copious amounts of time talking about the two times that  
15 law enforcement was inside Mr. Martin's house on Grey  
16 Birch Drive. There's a fundamental flaw in that, of  
17 course, because Mr. Martin also stayed with his  
18 girlfriend at 12 Cottage Grove. We have surveillance  
19 around that time. He leaves deals from Cottage Grove,  
20 sells to the undercover. So there's a whole house out  
21 there that law enforcement never went into.

22 There's another problem with the Nectar's search.  
23 You heard testimony that when they searched the house,  
24 it was days after the Nectar's incident. And they  
25 didn't search the house. Mr. Martin directed them to a

1 closet where the firearm was. They picked up the closet  
2 and left. They picked up the gun and left.

3 You heard Detective Beliveau say they didn't search  
4 the house. They went to a closet Mr. Martin told them  
5 to go to. Maybe the drugs were in the basement. Maybe  
6 they were in the attic. Maybe they were under the  
7 couch. Maybe they were in the oven. There could have  
8 been plenty of places inside that house because that  
9 house wasn't searched.

10 And the final point about that search of the house:  
11 Mr. Martin, you heard his own words, say, "I was up all  
12 night long after the shooting waiting for the police to  
13 come." Those are his words. That's what he says in the  
14 recording after Nectar's. "I was up all night long  
15 waiting for the police to come."

16 Well, if you are a drug dealer, and you know  
17 they're coming to your house, what are you going to do?  
18 You're going to spend hours sanitizing that house of  
19 every bit of drug dealing there is.

20 The claim that Mr. Martin is not a drug dealer is a  
21 fairy tale. Tell that to Mirnes, who's using his  
22 product, who told you he gets high off his product.  
23 Tell that to Daniel Lathrop, who put his livelihood on  
24 the line because of a product that Mr. Martin was  
25 selling to him. You think Daniel Lathrop would risk his

1 job as a pilot using Carl Martin's fake cocaine? Does  
2 that make any sense to you?

3 Tell that to Ashley Hojon. Tell that to Bevin.  
4 How about Byrd? Jake? Larry? Malik? They're all  
5 buying Mr. Martin's stuff. It's not good stuff. But  
6 it's just enough. Fairy tale that he's not a drug  
7 dealer.

8 It's also a fairy tale that there's pressure. This  
9 is defense Exhibit A3. Remember this? These are the  
10 text messages, 600 pages of text messages, between John  
11 Latimer and Jon Prack that continue for about two years.  
12 Spend time with that. Look through them. Look through  
13 the conversations between John Latimer and Jon Prack.

14 You know what you are not going to find in there?  
15 I'll tell you. And this is the secret to this case.  
16 This is what the defense doesn't want you to know.  
17 These are all the smoke screens that the defense has set  
18 up around these text messages. You will not find a  
19 single message in this case, in this binder, or in any  
20 other text messages in this case in which John Latimer  
21 communicates directly with Carl Martin and pressures  
22 him. You won't read a single text message because that  
23 doesn't exist.

24 Mr. Matson talked about assumptions. "Don't make  
25 assumptions in this room. We can't make assumptions.

1 We're based on facts." Absolutely 100 percent agree.  
2 It is based on facts. And the facts is -- the facts are  
3 there is not one single text message from John Latimer  
4 to Carl Martin in which Latimer pressures Martin. Not  
5 one. Not one piece of paper in all of this paper. Not  
6 one text message. So the assumption that the defense is  
7 making is that Prack pressured Latimer such that Latimer  
8 turned around and continued to pressure Mr. Martin.  
9 That's a big jump. Out of those 600 pages, not one  
10 piece of paper to show you the pressure that Latimer put  
11 on Mr. Martin. Doesn't exist. It's a fantasy. It's a  
12 fairy tale.

13 And the last fairy tale you need to know about,  
14 Exhibit 116B. Remember this line of questioning, the  
15 defense line of questioning? Tried to convince you that  
16 this photo, the night of the robbery, that was on Mr.  
17 Martin's phone -- it was created on the night of the  
18 robbery on Mr. Martin's phone, the defense tried to  
19 convince the agent that this was the Nectar's gun? This  
20 is an old photo. This is from a year ago. It's not  
21 from the robbery. It doesn't show Mr. Martin's new  
22 possession of another -- yet another firearm. It  
23 doesn't corroborate that he possessed the firearm on  
24 that day.

25 When you are in back in the jury room, take a look

1 at this. Take a look at that picture. It's not the  
2 same gun. It's not even close to the same gun. It's a  
3 fairy tale. It's a fantasy. He is trying to convince  
4 you of things that are not in the record, that's not in  
5 the evidence, that's not true to the facts of this case.

6 Don't be swayed by that. Mr. Martin has long been  
7 a drug dealer. He's selling fake stuff. You know why  
8 he's selling fake stuff? Because he makes money either  
9 way. Mr. Martin doesn't care whether he sells fake  
10 drugs or real drugs, because he makes money either way.  
11 That's what he is in this for. That's what drug dealers  
12 are in this for.

13 Now, if you are a better drug dealer, you put a  
14 little bit more cocaine in there to make sure people get  
15 high and they keep coming back. He's just not a very  
16 good businessman. That's all this is.

17 The last thing I want to say is that it sounds to  
18 me the defense in this case, it's kind of a it-wasn't-me  
19 defense. He accepts the government's evidence but he  
20 says, "I was at every deal but I had nothing to do with  
21 it. It was all Mirnes," Mirnes who has pled guilty to  
22 conspiracy, by the way. "Mirnes picked me up for every  
23 deal. Chauffeured me around. But it wasn't me."

24 And the capstone of that is that "somebody used my  
25 cell phone" to communicate with all these other



1 customers, to communicate with Mirnes. Mirnes was  
2 communicating with Mirnes over -- Carl Martin's cell  
3 phone? That makes a lot of sense? Don't be swayed by  
4 that defense. He wasn't pressured. He was there  
5 willingly at every deal. He sold the coke. Mirnes  
6 helped him. This is not a complicated case. You don't  
7 need to think too hard about what happened here.

8 You know, someone once said that usually the best  
9 answer is the easiest one. It's simple. This case is  
10 simple. He's a drug dealer and had been for years.

11 THE COURT: All right. It's now 25 after.  
12 Let's reconvene at quarter of, and it's for the charge,  
13 and the case will be given to you later this morning.  
14 (Court was in recess at 10:26 a.m.)

15 (The following was held in open court with the jury  
16 present at 10:51 a.m.)

17 THE COURT: All right. I have passed out, I  
18 believe, the charge to you. I have a legal obligation  
19 to actually read the charge, but I've found that it's  
20 really helpful if the jurors have a written copy of the  
21 charge to follow along as I -- as I read it. And you  
22 should know that the charge will be going into the jury  
23 room with you. You can bring in the charge that you  
24 have been given to assist in your deliberations. All  
25 right.

JURY CHARGE

Members of the jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant, Carl Martin. The first superseding indictment charges Mr. Martin on six counts. You will receive a copy of the indictment to take with you into the jury room.

Count 1 of the indictment alleges that Carl Martin knowingly and willfully conspired together and with others, known and unknown to the grand jury, to distribute cocaine, a Schedule II controlled substance, from in or about fall 2018 to on or about October 23rd, 2019.

Count 2 alleges that Carl Martin knowingly possessed a firearm on October 23rd, 2013 [sic], in furtherance of a drug trafficking crime, the distribution of cocaine as charged in Count 6.

Counts 3 through 6 allege that Carl Martin knowingly and intentionally distributed cocaine, a Schedule II controlled substance, on or about August 26th, 2019; on or about September 5, 2016 -- I'm sorry,

1 2019 -- Did I say 2016? -- 2019; on or about September  
2 20, 2019, and on or about October 23, 2019. You should  
3 refer to your copy of the first superseding indictment  
4 to read each charge and to identify the particular dates  
5 on which each count was alleged to have occurred.

6 ROLE OF INDICTMENT

7 At this time I would like to remind you of the  
8 function of a grand jury indictment. An indictment is  
9 merely a formal way to accuse a defendant of a crime  
10 preliminary to trial. An indictment is not evidence.  
11 An indictment does not create any presumption of guilt  
12 or permit an inference of guilt. It should not  
13 influence your verdict in any way other than to inform  
14 you of the nature of the charges against Mr. Martin.

15 Mr. Martin has pled not guilty to the six counts in  
16 the first superseding indictment. You have been chosen  
17 and sworn as jurors in this case to determine the issues  
18 of fact that have been raised by the allegations within  
19 the indictment and the denial made by the not guilty  
20 plea of Mr. Martin. You are to perform this duty  
21 without bias or prejudice against Mr. Martin or the  
22 prosecution.

23 PRESUMPTION OF INNOCENCE, REASONABLE DOUBT

24 AND BURDEN OF PROOF

25 The law presumes that the defendant is innocent of

1 the charges against him. The presumption of innocence  
2 lasts throughout the trial and during your  
3 deliberations. The presumption of innocence ends only  
4 if you, the jury, find beyond a reasonable doubt that  
5 the defendant is guilty. Should the government fail to  
6 prove the guilt of the defendant beyond a reasonable  
7 doubt, you must find the defendant not guilty.

8 The question naturally is what is a reasonable  
9 doubt? The words almost define themselves. It is a  
10 doubt based upon reason and common sense. It's a doubt  
11 that a reasonable person has after carefully weighing  
12 all of the evidence. It is a doubt that would cause a  
13 reasonable person to hesitate to act in a matter of  
14 importance in his or her personal life. Proof beyond a  
15 reasonable doubt must, therefore, be proof of such a  
16 convincing character that a reasonable person would not  
17 hesitate to rely and act upon it in the most important  
18 of his or her own affairs. A reasonable doubt is not a  
19 caprice or whim; it is not a speculation or suspicion.  
20 It is not an excuse to avoid the performance of an  
21 unpleasant duty. And it is not sympathy. Under your  
22 oath as jurors, you are not to be swayed by sympathy;  
23 you are to be guided solely by the evidence in this  
24 case. Reasonable doubt must [sic] arise from a lack of  
25 evidence.

1           In a criminal case, the burden of proof is upon the  
2 government to prove guilt beyond a reasonable doubt.  
3 The law does not require that the government prove guilt  
4 beyond all possible doubt; proof beyond a reasonable  
5 doubt is sufficient to convict. This burden never  
6 shifts to the defendant, which means that it is always  
7 the government's burden to prove each of the elements of  
8 the crimes charged beyond a reasonable doubt. The law  
9 never imposes upon a defendant in a criminal case the  
10 burden or duty of calling any witnesses or producing any  
11 evidence. A defendant is not even obligated to produce  
12 any evidence by cross examining the witnesses for the  
13 government. For each offense charged in the indictment,  
14 if after fair and impartial consideration of all the  
15 evidence you have a reasonable doubt, you must find the  
16 defendant not guilty of that offense. If you view the  
17 evidence in the case as reasonably permitting either of  
18 two conclusions -- one of innocence, the other of  
19 guilt -- you must find the defendant not guilty. If,  
20 however, after fair and impartial consideration of all  
21 the evidence you are satisfied of the defendant's guilt  
22 of that offense beyond a reasonable doubt, you should  
23 vote to convict.

24                               EVIDENCE

25           You have seen and heard the evidence presented

1 during this trial, and it is the sole province of the  
2 jury to determine the facts of this case. The evidence  
3 consists of the sworn testimony of the witnesses, any  
4 exhibits admitted into evidence, and all the facts  
5 admitted or stipulated. I would now like to call your  
6 attention to certain guidelines by which you are to  
7 evaluate the evidence.

8 There are two types of evidence which you may  
9 properly use in reaching your verdict. One type of  
10 evidence is direct evidence. Direct evidence is when a  
11 witness testifies about something she or he knows by  
12 virtue of their own senses, something she or he has  
13 seen, felt, touched or heard. Direct evidence may also  
14 be in the form of an exhibit with the fact to be proved  
15 is the exhibit's existence or condition.

16 Circumstantial evidence is evidence which tends to  
17 prove a disputed fact by proof of other facts.

18 Circumstantial evidence refers to inferring from one  
19 established fact the existence or nonexistence of some  
20 other fact on the basis of reason, experience, and  
21 common sense. Circumstantial evidence is of no less  
22 value than direct evidence. The law makes no  
23 distinction between direct evidence and circumstantial  
24 evidence but requires that your verdict be based on all  
25 of the evidence presented.

1           You should weigh all the evidence in the case.  
2       After weighing all the evidence, if you are not  
3       convinced of the guilt of Carl Martin beyond a  
4       reasonable doubt, you must find him not guilty.

5           The evidence that you will consider in reaching  
6       your verdict consists, as I have said, only of the sworn  
7       testimony of witnesses, the stipulations made by the  
8       parties, and all the exhibits that have been received in  
9       evidence. Anything you have seen or heard outside the  
10      courtroom is not evidence and must be not -- and must be  
11      entirely disregarded. You are to consider only the  
12      evidence in this case. But in your consideration of the  
13      evidence, you do not leave behind your common sense and  
14      life experiences. In other words, you are not limited  
15      solely to what you see and hear as the witnesses  
16      testify. You are permitted to draw, from facts which  
17      you find have been proven, such reasonable inferences as  
18      you feel are justified in light of your experiences.  
19      However, if any juror has specialized knowledge,  
20      expertise or information with regard to the facts or  
21      circumstances of this case, he or she may not rely upon  
22      it in deliberations or communicate it to other jurors.

23                                   STIPULATION OF FACTS

24           When the attorneys on both sides stipulate or agree  
25      as to the existence of a fact, you must accept the

1 stipulation as evidence and regard that fact as proven.

2 STRICKEN TESTIMONY AND ARGUMENTS EXCLUDED

3 I caution you that you should entirely disregard  
4 any testimony that has been excluded or stricken from  
5 the record. Likewise, the arguments of the attorneys  
6 and the questions asked by the attorneys are not  
7 evidence in the case. The evidence that you will  
8 consider in reaching your verdict consists only of the  
9 sworn testimony of witnesses, the stipulations made by  
10 the parties, and all exhibits admitted into evidence.

11 Over the course of the trial I occasionally have  
12 asked questions of a witness in order to bring out facts  
13 not fully covered in his or her testimony. Do not  
14 assume that I hold any opinion on matters related to my  
15 questions.

16 OBJECTIONS

17 Over the course of the trial, I have ruled on  
18 objections made by the attorneys. These objections and  
19 my subsequent rulings are legal issues for the Court to  
20 decide and are not for your concern or consideration.  
21 It is the duty and job of the attorneys to make  
22 objections and you should not hold it against either  
23 side.

24 ARGUMENTS AND STATEMENTS BY THE ATTORNEYS

25 The opening and closing arguments, questions and



1 other remarks made by attorneys during the trial are not  
2 evidence. You should consider witness testimony and the  
3 exhibits in making your decisions about the facts in  
4 this case. Attorney statements and arguments reflect an  
5 effort to organize and describe the evidence for you.  
6 You should consider their arguments carefully. In the  
7 end, however, it is the evidence admitted at trial which  
8 must govern your decision making.

9 CREDIBILITY OF WITNESSES

10 You as the jurors are the sole judges of the  
11 credibility of witnesses and the weight of their  
12 testimony. You do not have to accept all the evidence  
13 presented in this case as true or accurate. Instead, it  
14 is your job to determine the credibility or  
15 believability of each witness. You do not have to give  
16 the same weight to the testimony of each witness since  
17 you may accept or reject the testimony of any witness in  
18 whole or in part. In weighing the testimony of the  
19 witnesses you have heard, you should consider their  
20 interest, if any, in the outcome of the case; their  
21 manner of testifying; their candor; their bias, if any;  
22 their resentment or anger toward the defendant, if any;  
23 the extent to which other evidence in the case supports  
24 or contradicts their testimony; and the reasonableness  
25 of their testimony. You may believe as much or as

1 little of the testimony of each witness as you think  
2 proper.

3 The weight of the evidence is not determined by the  
4 number of witnesses testifying. You may find the  
5 testimony of a small number of witnesses or a single  
6 witness about a fact more credible than the different  
7 testimony of a larger number of witnesses. The fact  
8 that one party called more witnesses and introduced more  
9 evidence than the other does not mean that you should  
10 necessarily find the facts in favor of the side offering  
11 the most witnesses. Inconsistencies or discrepancies in  
12 the testimony of a witness, or between the testimony of  
13 different witnesses, may or may not cause you to  
14 discredit such testimony. Two or more persons may hear  
15 or see things differently or may have different points  
16 of view regarding various occurrences. It is for you to  
17 weigh the effect of any discrepancies in testimony,  
18 considering whether they pertain to important or  
19 unimportant details, and whether a discrepancy results  
20 from innocent error or intentional falsehood. You  
21 should attempt to resolve inconsistencies if you can,  
22 but you also are free to believe or disbelieve any part  
23 of the testimony of any witness as you see fit.

24 In this case you have heard testimony from a number  
25 of witnesses. I am now going to give you some

1 guidelines for your determinations regarding the  
2 testimony of the various types of witnesses presented in  
3 this case.

4 INTEREST IN OUTCOME

5 As a general matter, in evaluating the credibility  
6 of each witness, you should take into account any  
7 evidence that the witness who testified may benefit in  
8 some ways -- in some way from the outcome of this case.  
9 Such an interest in the outcome creates a motive to  
10 testify falsely and may sway the witness to testify in a  
11 way that advances his or her own interests. Therefore,  
12 if you feel that any witness whose testimony you are  
13 considering may have an interest in the outcome of this  
14 trial, then you should bear that factor in mind when  
15 evaluating the credibility of his or her testimony and  
16 accept it with great care.

17 This is not to suggest that every witness who has  
18 an interest in the outcome of a case will testify  
19 falsely. It is for you to decide to what extent, if at  
20 all, the witness's interest has affected or colored his  
21 or her testimony.

22 EXPERT WITNESSES

23 You have heard the testimony of expert witnesses in  
24 this case. An expert witness is permitted to express  
25 his or her opinion on those matters about which he or

1 she has special knowledge, skill, experience, or  
2 training. Such testimony is presented to you on the  
3 theory that someone who is experienced and knowledgeable  
4 in a field can assist you in understanding the evidence  
5 or in reaching an independent decision on the facts.

6 In weighing an expert's testimony, you may consider  
7 his or her qualifications, opinions, and reasons for  
8 testifying, as well as all the other considerations that  
9 apply when assessing a witness's credibility. You may  
10 give the expert's testimony whatever weight, if any, you  
11 find it deserves in light of the evidence in the case.  
12 You should not, however, accept the expert's testimony  
13 merely because he or she is an expert. Nor should you  
14 substitute it for your own reason, judgment, and common  
15 sense. The determination of the facts in this case, as  
16 I have said, rests solely with you.

17 LAW ENFORCEMENT WITNESSES

18 You have heard the testimony of law enforcement  
19 officials in this case. The fact that a witness may  
20 be employed by a federal, state or local government as a  
21 law enforcement official, does not mean that his or her  
22 testimony is necessarily deserving of more or less  
23 consideration or greater or lesser weight than that of  
24 an ordinary witness.

25 At the same time, it is quite legitimate for

1 defense counsel to try to attack the credibility of a  
2 law enforcement witness on the grounds that his or her  
3 testimony may be colored by a personal or professional  
4 interest in the outcome of the case. It is your  
5 decision, after reviewing all the evidence, whether to  
6 accept the testimony of law enforcement officials, and  
7 to give to that testimony whatever weight, if any, you  
8 find it deserves.

9 ACCOMPLICES CALLED BY THE GOVERNMENT

10 You have heard witnesses who testified that they  
11 were actually involved in planning and carrying out the  
12 crime charged in the indictment. There has been a great  
13 deal said about these so-called accomplice witnesses and  
14 whether or not you should believe them.

15 The government argues, as it is permitted to do,  
16 that it must take the witnesses as it finds them. It  
17 argues that only people who themselves take part in  
18 criminal activity have the knowledge required to show  
19 criminal behavior by others. For those very reasons,  
20 the law allows the use of accomplice testimony. Indeed,  
21 it is the law in federal courts that the testimony of  
22 accomplices may be enough in itself for conviction, if  
23 the jury finds that the testimony establishes guilt  
24 beyond a reasonable doubt.

25 However, it is also the case that accomplice

1 testimony is of such nature that it must be scrutinized  
2 with great care and viewed with particular caution when  
3 you decide how much of that testimony to believe.

4 GOVERNMENT INFORMERS

5 There has been evidence introduced at trial that  
6 the government used an informer in this case. I  
7 instruct you that there is nothing improper in the  
8 government's use of informers and, indeed, certain  
9 criminal conduct would never be detected without the use  
10 of informers. You, therefore, should not concern  
11 yourselves with how you personally feel about the use of  
12 informers. Your concern is to decide whether the  
13 government has proved the guilt of the defendant beyond  
14 a reasonable doubt, regardless of whether evidence was  
15 obtained by the use of an informer.

16 On the other hand, where an informer testifies, as  
17 occurred here, his or her testimony must be examined  
18 with great scrutiny -- with greater scrutiny than the  
19 testimony of an ordinary witness. You should consider  
20 whether he or she received any benefits or promises from  
21 the government which would motivate the informer to  
22 testify falsely against the defendant. For example, the  
23 informer may believe that he or she will only continue  
24 to receive these benefits if he or she produces evidence  
25 of criminal conduct.

1           If you decide to accept an informer's testimony,  
2   after considering it in light of all the evidence in  
3   this case, then you may give it whatever weight, if any,  
4   you think it deserves, but you should consider the  
5   testimony of the informer with more caution than the  
6   testimony of other witnesses.

7                   USE OF DRUGS BY CERTAIN WITNESSES

8           There has been evidence introduced at the trial  
9   that the government called as witnesses persons who were  
10   using or addicted to drugs when the events they observed  
11   took place. I instruct you that there is nothing  
12   improper about calling such witnesses to testify about  
13   events within their personal knowledge.

14           However, testimony from such witnesses may be  
15   examined with greater scrutiny than the testimony of  
16   other witnesses. The testimony of a witness who was  
17   using drugs at the time of the events he or she is  
18   testifying about may be less believable because of the  
19   effect of the drugs -- the drugs may have on the  
20   witness's ability to perceive or relate to the events in  
21   question.

22           If you decide to accept the testimony of such  
23   witnesses, after considering it in the light of all the  
24   evidence in this case, then you may give it whatever  
25   weight, if any, you find it deserves.

1           GOVERNMENT WITNESS - NOT PROPER TO CONSIDER GUILT

2           You have heard testimony from government witnesses  
3           who pled guilty to charges arising out of the same facts  
4           as this case. You are not to draw any conclusions or  
5           inferences of any kind about the guilt of the defendant  
6           on trial from the fact that a prosecution witness pled  
7           guilty to similar charges. That witness's decision to  
8           plead guilty was a personal decision about his own  
9           guilt. It may not be used by you in any way as evidence  
10          against the defendant on trial here.

11           COOPERATING WITNESS PLEA AGREEMENT

12          In this case, there has been testimony from  
13          government witnesses who pled guilty after entering into  
14          agreements with the government to testify. There is  
15          evidence that the government has promised to bring the  
16          witnesses' cooperation to the attention of the  
17          sentencing court.

18          The government is permitted to enter into this kind  
19          of plea agreement. You, in turn, may accept the  
20          testimony of such a witness and convict the defendant on  
21          the basis of this testimony alone, if it convinces you  
22          of the defendant's guilt beyond a reasonable doubt.

23          However, you should bear in mind that a witness who  
24          has entered into such an agreement has an interest in  
25          this case different than an ordinary witness. A witness



1 who realizes that he or she may be able to obtain his or  
2 her own freedom or receive a shorter sentence by giving  
3 testimony favorable to the government, has a motive to  
4 testify falsely. Conversely, a witness who realizes  
5 that he or she may benefit by providing truthful  
6 testimony has a motive to be honest. Therefore, you  
7 must examine his or her testimony with caution and weigh  
8 it with great care. If, after scrutinizing his or her  
9 testimony, you decide to accept it, you may give it  
10 whatever weight, if any, you find it deserves.

11 IMPEACHMENT OF A WITNESS

12 A witness may be discredited or impeached by  
13 contradictory evidence, by a showing that the witness  
14 testified falsely concerning a matter, or by evidence  
15 that at some other time the witness said or did  
16 something inconsistent with the witness's present  
17 testimony. It is your job to give the testimony of each  
18 witness the credibility or weight that you think it  
19 deserves.

20 RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

21 You may not consider any personal feelings you may  
22 have about the race, religion, national origin, sex, or  
23 age of Mr. Martin or any of the witnesses in your  
24 deliberations over the verdict or in the weight given to  
25 any evidence.

1                                    GOVERNMENT AS A PARTY

2            You are to perform the duty of finding the facts  
3 without bias or prejudice toward any party. You are to  
4 perform this duty in an attitude of complete fairness  
5 and impartiality.

6            This case is important to the government, for the  
7 enforcement of criminal laws is a matter of prime  
8 concern to the community. Equally, this case is  
9 important to Mr. Martin, who is charged with a serious  
10 crime.

11           The fact that the prosecution is brought in the  
12 name of the United States of America entitles the  
13 government to no greater consideration than that  
14 accorded to any other party to a case. By the same  
15 token, it is entitled to no less consideration. All  
16 parties, whether government or individuals, stand as  
17 equals before the court.

18                                    DEFENDANT NOT TESTIFYING

19           You may have observed that Mr. Martin did not  
20 testify in this case. Mr. Martin has a constitutional  
21 right not to do so. He does not have to testify, and  
22 the government may not call him as a witness. Mr.  
23 Martin's decision not to testify raises no presumption  
24 of guilt and does not permit you to draw any unfavorable  
25 inference. Therefore, in determining whether or not the

1 government has proved Mr. Martin's guilt beyond a  
2 reasonable doubt, you are not to consider in any manner  
3 the fact that he did not testify. Do not even discuss  
4 it in your deliberations.

5 ADMISSIONS BY A DEFENDANT

6 There has been evidence Mr. Martin made certain  
7 statements in which the government claims he admitted  
8 certain facts.

9 In deciding what weight to give Mr. Martin's  
10 statements, you should first examine with great care  
11 whether each statement was made and whether, in fact, it  
12 was voluntarily and understandingly made. I instruct  
13 you that you are to give the statements such weight as  
14 you feel they deserve in light of all the evidence.

15 OTHER CRIMES, WRONGS, OR ACTS OF DEFENDANT

16 As part of the government's case, you heard  
17 testimony and have seen evidence that Mr. Martin engaged  
18 in other acts that are otherwise unrelated to the  
19 charges in the indictment. This evidence of these other  
20 acts was admitted only for a limited purpose. You are  
21 to consider this evidence only for the purposes -- for  
22 the purpose of deciding whether Mr. Martin was  
23 predisposed to committing the substantive charges for  
24 which he is on trial. Do not consider this evidence for  
25 any other purpose.

1           Of course it is for you to determine whether you  
2 believe this evidence and, if you do believe it, whether  
3 you accept it for the purpose offered. You may give it  
4 such weight as you feel it deserves, but only for the  
5 limited purpose that I described to you.

6           Mr. Martin is not on trial for committing these  
7 other acts. You may not consider the evidence of these  
8 other acts as a substitute for proof that he committed  
9 the crimes charged. If you find that the government has  
10 failed to prove the primary charges beyond a reasonable  
11 doubt, do not consider these other acts in any other  
12 way.

#### 13                           PUNISHMENT

14           The punishment provided by law for the offenses  
15 charged in the first superseding indictment is a matter  
16 exclusively within the province of the Court, and should  
17 never be considered by the jury, in any way, in arriving  
18 at an impartial verdict as to the guilt or innocence of  
19 Mr. Martin.

#### 20                           USE OF RECORDINGS AND TRANSCRIPTS

21           The government has offered evidence in the form of  
22 recordings. This information may have been gathered  
23 without the knowledge of the participants. The use of  
24 these procedures to gather evidence is perfectly lawful,  
25 and the government is entitled to use the evidence in

1 this case. You should not consider the method of  
2 gathering this evidence in your deliberations.

3 Along with these recordings, the parties were  
4 permitted to display a transcript containing the  
5 parties' interpretation of what can be heard on the  
6 recordings. The transcripts were provided as an aid or  
7 guide to assist you, the jury, in listening to the  
8 recordings; however, the transcripts themselves are not  
9 evidence. The recordings are evidence, and, as such,  
10 you must rely on your own interpretation of what you  
11 heard on the recordings. If you think you heard  
12 something different than what was represented on the  
13 transcript, then what you heard on the recording must  
14 control.

15 INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

16 Having explained the general guidelines by which  
17 you will evaluate the evidence, I will now instruct you  
18 with regard to the law that is applicable to your  
19 determinations in this case. It is your duty as jurors  
20 to follow the law as stated to you in these instructions  
21 and to apply the rules of law to the facts that you find  
22 from the evidence. You will not be faithful to your  
23 oath as jurors if you find a verdict that is contrary to  
24 the law that I give to you.

25 However, it is the sole province of the jury to

1 determine the facts in this case. I do not, by any  
2 instructions given to you, intend to persuade you in any  
3 way as to any questions of fact.

4 The parties in this case have a right to expect  
5 that you will carefully and impartially consider all the  
6 evidence in the case, that you will follow the law as I  
7 state it to you, and that you will reach a just verdict.

8 MULTIPLE COUNTS

9 The indictment charges Carl Martin in six counts.  
10 You must consider each count and any evidence pertaining  
11 to it separately and return a separate verdict of guilty  
12 or not guilty for each.

13 "ON OR ABOUT" EXPLAINED

14 The indictment in this case charges that offenses  
15 were committed "in or about" or "on or about" certain  
16 dates. Although it is necessary for the government to  
17 prove beyond a reasonable doubt that the offenses were  
18 committed on dates reasonably near the dates alleged in  
19 the indictment, it is not necessary for the government  
20 to prove that the offenses were committed precisely on  
21 the dates charged.

22 COUNT 1: CONSPIRACY TO DISTRIBUTE COCAINE

23 Count 1 of the first superseding indictment charges  
24 that Carl Martin engaged in a conspiracy with others to  
25 distribute cocaine, a Schedule II controlled substance,

1 in violation of 21 USC, sections 846, 841(a)(1) and  
2 841(b)(1)(C). Title 21, United States Code, section  
3 846, as charged in Count 1, makes it a separate federal  
4 crime or offense for anyone to conspire or agree with  
5 someone else to do something which, if actually carried  
6 out, would be a violation of section 841(a)(1). Section  
7 841(a)(1) makes it a crime for anyone to knowingly or  
8 intentionally distribute a controlled substance. I  
9 instruct you that cocaine is a controlled substance.

10 Under the law, a conspiracy is an agreement or a  
11 kind of partnership in criminal purposes in which each  
12 member becomes the agent or partner of the other  
13 members.

14 In order to establish the conspiracy offense in  
15 charged in Count 1, it is sufficient to show that the  
16 conspirators tacitly came to a mutual understanding to  
17 accomplish an unlawful act by means of a joint plan or  
18 common design. The indictment alleges the objective of  
19 the conspiracy was to distribute cocaine. If you find  
20 beyond a reasonable doubt that the objective of the  
21 conspiracy was to distribute this drug, then you may  
22 find that the joint plan or common design is proven.  
23 Also, because the essence of a conspiracy is the making  
24 of the scheme itself, it is not necessary for the  
25 government to prove that the conspirators actually

1 succeeded in accomplishing their unlawful plan.

2 In order to find Mr. Martin guilty of Count 1, you  
3 must find that the government has proven beyond a  
4 reasonable doubt the following essential elements of the  
5 charge. That at the time and places alleged in the  
6 indictment:

7 (1) two or more persons in some way or manner, came  
8 to a mutual understanding to try to accomplish the  
9 common and unlawful plan that is charged in the first  
10 superseding indictment;

11 (2) that Mr. Martin knowingly and willfully became  
12 a member of such conspiracy.

13 ELEMENT ONE: EXISTENCE OF AGREEMENT

14 The first element which the government must prove  
15 beyond a reasonable doubt to establish the offense of  
16 conspiracy is that two or more persons entered the  
17 unlawful agreement charged in the indictment.

18 In order for the government to satisfy this  
19 element, you need not find that the alleged members of  
20 the conspiracy met together and entered into an  
21 express -- to any express or formal agreement.  
22 Similarly, you need not find that the alleged  
23 conspirators stated, in words or writing, that the  
24 scheme -- what the scheme was, its object or purpose, or  
25 every precise detail of the scheme or the means by which



1 its object or purpose was to be accomplished.

2 What the government must prove is that there was a  
3 mutual understanding, either spoken or unspoken, between  
4 two or more people, to cooperate with each other to  
5 accomplish an unlawful act. You may, of course, find  
6 that the existence of an agreement to disobey or  
7 disregard the law has been established by direct proof.  
8 However, such -- since conspiracy is, by its very  
9 nature, characterized by secrecy, you may also infer its  
10 existence from the circumstances of this case and the  
11 conduct of the parties involved.

12 In a very real sense, then, it is -- then, in the  
13 context of conspiracy cases, actions often speak louder  
14 than words. In this regard, you may, in determining  
15 whether an agreement existed here, consider the actions  
16 and statements of all of those you find to be  
17 participants as proof that a common design existed on  
18 the part of the persons charged to act together to  
19 accomplish an unlawful purpose.

20 ELEMENT 2: MEMBERSHIP IN A CONSPIRACY

21 The second element which the government must prove  
22 beyond a reasonable doubt to establish the offense of  
23 conspiracy is that Carl Martin knowingly became a member  
24 of the conspiracy.

25 If you are satisfied that the conspiracy charged in

1 the indictment existed, you must next ask yourselves who  
2 the members of that conspiracy were. In deciding  
3 whether Mr. Martin was, in fact, a member of the  
4 conspiracy, you should consider whether he knowingly  
5 joined the conspiracy. Did he participate in it with  
6 the knowledge of its unlawful purpose and with the  
7 specific intention of furthering its business or  
8 objective as an associate or worker?

9 In that regard, it has been said that in order for  
10 a defendant to be deemed a participant in a conspiracy,  
11 he must have had a stake in the venture or its outcome.  
12 You are instructed that, while proof of a financial or  
13 other interest in the outcome of a scheme is not  
14 essential, if you find that Mr. Martin had such an  
15 interest, that is a factor which you may properly  
16 consider in determining whether or not the defendant was  
17 a member of the conspiracy charged in the indictment.

18 As I mentioned, before Mr. Martin can be found to  
19 have been a conspirator, you must find -- you must first  
20 find that he knowingly joined in the unlawful agreement  
21 or plan. The key question, therefore, is whether he  
22 joined the conspiracy with an awareness of at least some  
23 of the basic aims and purposes of the unlawful  
24 agreement.

25 Mr. Martin's knowledge is a matter of inference

1 from the facts proved. In that connection, I instruct  
2 you that to become a member of the conspiracy, Mr.  
3 Martin need not have known the identities of each and  
4 every other member, nor need he have been aware of all  
5 of their activities. Moreover, Mr. Martin need not have  
6 been fully informed as to all of the details or scope of  
7 the conspiracy in order to justify an inference of  
8 knowledge or -- on his part. Furthermore, Mr. Martin  
9 need not have joined in all of the conspiracy's unlawful  
10 acts or objectives or participated in it for the full  
11 time period alleged in the indictment.

12 The extent of a defendant's participation has no  
13 bearing on the issue of his guilt. A conspirator's  
14 liability is not measured by the extent or duration of  
15 his participation. Indeed, each member may perform  
16 separate and distinct acts and may perform them at  
17 different times. Some conspirators play major roles,  
18 while others play minor parts in the scheme. An equal  
19 role is not what the law requires. In fact, even a  
20 single act may be sufficient to draw a defendant within  
21 the ambit of the conspiracy.

22 A conspiracy may continue for a long period of time  
23 and may include the performance of many transactions.  
24 It is not necessary that all members of the conspiracy  
25 join it at the same time, and one may become a member of

1 a conspiracy without full knowledge of all the details  
2 of the unlawful scheme or the names, identities, or  
3 locations of all of the other members.

4 So if a defendant has an understanding of the  
5 unlawful nature of a plan and knowingly joins in that  
6 plan on one occasion, that is sufficient to convict him  
7 for conspiracy even though he had not participated  
8 before and even though he played a minor part.

9 I want to caution you, however, that a defendant's  
10 mere presence at the scene of the alleged crime does not  
11 by itself make him a member of the conspiracy.

12 Similarly, mere association with one or more members of  
13 the conspiracy does not automatically make the defendant  
14 a member. A person may know, or be friendly with, a  
15 criminal, without being a criminal himself. Mere  
16 similarity of conduct or the fact that they may have  
17 assembled together and discussed common aims and  
18 interests does not necessarily establish proof of the  
19 existence of a conspiracy.

20 I also want to caution you that mere knowledge or  
21 acquiescence, without participation, in the unlawful  
22 plan is not sufficient. Moreover, the fact that the  
23 acts of a defendant, without knowledge, merely happen to  
24 further the purpose or objectives of the conspiracy,  
25 does not make a defendant a member. More is required

1 under the law. What is necessary is that the defendant  
2 must have participated with knowledge of at least some  
3 of the purposes or objectives of the conspiracy and with  
4 the intent of aiding in the accomplishment of those  
5 unlawful ends.

6 In sum, Mr. Martin, with an understanding of the  
7 unlawful character of the conspiracy, must have  
8 intentionally engaged, advised and [sic] assisted in it  
9 for the purpose of furthering the illegal undertaking.  
10 He thereby becomes a knowing and willing participant in  
11 the unlawful agreement, that is to say, a conspirator.

12 "KNOWINGLY" AND "WILLFULLY" DEFINED

13 You have been instructed that to sustain its burden  
14 of proof on Count 1, the government must prove that Mr.  
15 Martin act knowingly and willfully. A person acts  
16 knowingly if he acts intentionally and voluntarily, and  
17 not because of ignorance, mistake, accident or  
18 carelessness. You may consider evidence of Mr. Martin's  
19 words, acts or omissions, along with all other evidence,  
20 in deciding whether he acted knowingly.

21 Willfully means to act with knowledge that one's  
22 conduct is unlawful and with the intent to do something  
23 that the law forbids, that is to say with bad purpose to  
24 disobey or to disregard the law. Mr. Martin's conduct  
25 was not willful if it was due to negligence,

1 inadvertence, or mistake.

2 Now before we go on to Count 2, let's just take a  
3 one-minute stretch break and invite you to stand and  
4 stretch, and I'm going to have some water.

5 (Brief pause.)

6 THE COURT: All right. Let's return to the  
7 charge.

8 COUNT 2: KNOWING POSSESSION OF A FIREARM IN  
9 FURTHERANCE OF A DRUG TRAFFICKING CRIME

10 You will recall that in Count 2 of the indictment,  
11 Carl Martin is charged with knowingly possessing a  
12 firearm in furtherance of a drug trafficking crime for  
13 which he may be prosecuted in a court of the United  
14 States. The underlying drug trafficking crime is the  
15 distribution of cocaine, the offense charged in Count 6.

16 The relevant statute on this subject is Title 18  
17 United States Code, section 924(c). If upon  
18 consideration of all of the evidence you find that the  
19 government has failed to prove Count 6 beyond a  
20 reasonable doubt, then you will proceed no further.  
21 Count 2 is to be considered only if you first find Mr.  
22 Martin guilty under Count 6 as charged.

23 In reaching your verdict on Count 2, you may  
24 consider the evidence of Count 6 only for the purpose of  
25 determining whether the elements of Count 6 have been

1 satisfied.

2 The government must prove each of the following  
3 elements beyond a reasonable doubt to sustain its burden  
4 of proving Mr. Martin guilty:

5 First, that Mr. Martin committed a drug trafficking  
6 crime for which he might be prosecuted in a court of the  
7 United States; second, that Mr. Martin knowingly  
8 possessed a firearm in furtherance of the crime charged  
9 in Count 1.

10 ELEMENT 1: COMMISSION OF THE PREDICATE CRIME

11 The first element the government must prove beyond  
12 a reasonable doubt is that Mr. Martin committed a drug  
13 trafficking crime for which he might be prosecuted in a  
14 court of the United States.

15 Mr. Martin is charged in Count 6 of the indictment  
16 with committing the crime of distribution of cocaine. I  
17 instruct you that the crime of distributing cocaine is a  
18 drug trafficking crime. However, it is for you to  
19 determine whether the government has proven beyond a  
20 reasonable doubt that Mr. Martin committed the crime of  
21 knowingly and intentionally distributing cocaine as  
22 charged.

23 ELEMENT 2: KNOWING POSSESSION OF A FIREARM IN

24 FURTHERANCE OF THE COMMITMENT OF THE PREDICATE CRIME

25 That should be "commission" of the predicate crime.

1           The second element that the government must prove  
2       beyond a reasonable doubt is that Mr. Martin knowingly  
3       possessed a firearm in furtherance of the commission of  
4       the crime charged in Count 6. A firearm is any weapon  
5       which will or is designed to or may be readily converted  
6       to expel a projectile by the action of an explosive.  
7       The term also includes the frame or receiver of any such  
8       weapon.

9           To prove that Carl Martin possessed the firearm in  
10      furtherance of the crime, the government must prove that  
11      he had possession of the firearm and that such  
12      possession was in furtherance of that crime. Possession  
13      means that a defendant either had physical possession of  
14      the firearm on his person or that he constructively  
15      possessed the firearm, meaning that he had dominion and  
16      control over the place where the firearm was located and  
17      had the power and intention to exercise control over the  
18      firearm.

19          To possess a firearm in furtherance of the crime  
20      means that the firearm helped forward, advance, or  
21      promote the commission of the crime. The mere  
22      possession of the firearm at the scene of the crime is  
23      not sufficient under this definition. The firearm must  
24      have played some part in furthering the crime in order  
25      for this element to be satisfied.



1           To satisfy this element, you must also find that  
2           Mr. Martin possessed the firearm knowingly. This means  
3           than he possessed the firearm purposely and voluntarily,  
4           and not by accident or mistake. It also means that he  
5           knew that the weapon was a firearm, as we commonly use  
6           the word. However, the government is not required to  
7           prove that Mr. Martin knew than he was breaking the law.

8                           COUNTS 3, 4, 5, AND 6: DISTRIBUTION OF  
9   CONTROLLED SUBSTANCE

10           As you will recall in Counts 3, 4, 5, and 6 of the  
11           indictment, Carl Martin is charged with knowingly and  
12           intentionally distributing a controlled substance.  
13           Title 21 USC, section 841 makes it a federal crime for  
14           any person to knowingly or intentionally distribute  
15           controlled substances.

16           To sustain its burden of proof for the crime of  
17           distribution of controlled substance, the government  
18           must prove the following two elements beyond a  
19           reasonable doubt:

20                   First, that Mr. Martin knowingly and intentionally  
21           distributed a controlled substance, as charged in the  
22           indictment, and

23                   Second, that at the time of the distribution, Mr.  
24           Martin knew that the substance distributed was a  
25           controlled substance. I instruct you again that

1 cocaine, as charged in the indictment, is a Schedule II  
2 controlled substance.

3 DEFINITION OF "DISTRIBUTION"

4 The word "distribution" means to deliver a  
5 controlled substance. Deliver is defined as the actual,  
6 constructive, or attempted transfer of a controlled  
7 substance. Simply stated, the words "distribute" and  
8 "deliver" mean to pass on, or to hand over to another,  
9 or to cause to be passed on or handed over to another,  
10 or to try to pass on or hand over to another, controlled  
11 substances.

12 Distribution does not require sale. Activities in  
13 furtherance of the ultimate sale, such as vouching for  
14 the quality of the drugs, negotiating for or receiving  
15 the price, and supplying and delivering the drugs may  
16 constitute distribution.

17 In short, distribution requires a concrete  
18 involvement in the transfer of drugs.

19 "KNOWINGLY" AND "INTENTIONALLY" DEFINED

20 With respect to Counts 3, 4, 5, and 6 of the  
21 indictment, you have been instructed that in order to  
22 sustain its burden of proof, the government must prove  
23 that Mr. Martin acted knowingly and intentionally. A  
24 person acts knowingly if he acts intentionally and  
25 voluntarily and not because of ignorance, mistake,

1 accident, or carelessness. You may consider evidence of  
2 Mr. Martin's words, acts, or omissions, along with all  
3 other evidence, in deciding whether he acted knowingly.  
4 A person acts intentionally if he acts deliberately and  
5 purposefully and not because of mistakes or accident.

6 KNOWLEDGE OF THE CONTROLLED SUBSTANCE

7 Although the government must prove that Mr. Martin  
8 knew that he possessed a controlled substance, the  
9 government does not have to prove that he knew the exact  
10 nature of the substance he possessed. It is enough that  
11 the government proves that Mr. Martin knew that he  
12 possessed some kind of controlled substance. Your  
13 decision about whether Mr. Martin knew the materials he  
14 distributed were a controlled substance involves a  
15 decision about his state of mind. It is obviously  
16 impossible to prove directly the operation of Mr.  
17 Martin's mind. But a consideration of all the facts and  
18 circumstances shown by the evidence and the exhibits in  
19 this case may enable you to infer that Mr. Martin's  
20 state of mind -- what Mr. Martin's state of mind was.  
21 You may rely on circumstantial evidence in determining  
22 his state of mind.

23 AIDING AND ABETTING

24 Alternatively, the indictment charges Carl Martin  
25 in Counts 3, 4, 5, and 6 with violating Section 2 of

1 Title 18 of the United States Code, which makes it a  
2 crime to aid or abet the commission of an offense  
3 against the United States. Specifically, Carl Martin is  
4 charged with aiding and abetting the distribution of  
5 cocaine as charged in these counts.

6 The aiding and abetting statute, Section 2(a) of  
7 Title 18 of the United States Code, provides that: in  
8 quote, Whoever commits an offense against the United  
9 States or aids or abets or counsels, commands, or  
10 induces, or procures its commission, is punishable as a  
11 principal, close quote.

12 Under the aiding and abetting statute, it is not  
13 necessary for the government to show that a defendant  
14 himself physically committed the crimes with which he is  
15 charged in order for the government to sustain its  
16 burden of proof. A person who aids or abets another to  
17 commit an offense is just as guilty of that offense as  
18 if he committed it himself.

19 Accordingly, you may find Mr. Martin guilty of the  
20 offense charged if you find beyond a reasonable doubt  
21 that another person actually committed the offense with  
22 which Mr. Martin is charged, and that Mr. Martin aided  
23 or abetted that person in the commission of the offense.

24 As you can see, the first requirement is that you  
25 find that another person has committed the crime

1 charged. Obviously, no one can be convicted of aiding  
2 or abetting the criminal acts of another if no crime was  
3 committed by the other person in the first place. But  
4 if you do find that a crime was committed, then you must  
5 consider whether Mr. Martin aided or abetted the  
6 commission of that crime.

7 In order to aid or abet another to commit a crime,  
8 it is necessary that a defendant knowingly associate  
9 himself in some way with the crime, and that he  
10 participate in the crime by doing some act to help make  
11 the crime succeed.

12 To establish that Mr. Martin knowingly associated  
13 himself with the crime, the government must establish  
14 that he knew that another person knowingly and  
15 intentionally distributed cocaine.

16 To establish that Mr. Martin participated in the  
17 commission of the crime, the government must prove that  
18 he engaged in some affirmative conduct or overt act for  
19 the specific purpose of bringing about that crime.

20 The mere presence of a defendant where a crime is  
21 being committed, even coupled with knowledge by the  
22 defendant that a crime is being committed, or merely  
23 associating with others who are committing a crime, is  
24 not sufficient to establish aiding and abetting. One  
25 who has no knowledge that a crime is being committed or

1 is about to be committed but inadvertently does  
2 something that aids in the commission of that crime is  
3 not an aider and abettor. An aider and abettor must  
4 know that the crime is being committed and act in a way  
5 which is intended to bring about the success of the  
6 criminal venture.

7 To determine whether Mr. Martin aided or abetted  
8 the commission of the crime with which he is charged,  
9 ask yourself these questions:

10 Did he participate in the crime charged as  
11 something he wished to bring about?

12 Did he knowingly associate himself with the  
13 criminal venture?

14 Did he seek by his actions to make the criminal  
15 venture succeed?

16 If he did, then Mr. Martin is an aider and abettor,  
17 and therefore guilty of the offense. If, on the other  
18 hand, your answer to any of these questions is no, then  
19 Mr. Martin is not an aider and abettor, and you must  
20 find him not guilty.

21 ENTRAPMENT DEFENSE

22 Defendant Carl Martin asserts as a defense that he  
23 was the victim of entrapment by an agent of the  
24 government. While the law permits government agents to  
25 trap an unwary criminally minded person, the law does

1 not permit government agents to entrap an unwary  
2 innocent. Thus, a defendant may not be convicted of a  
3 crime if it was the government who gave the defendant  
4 the idea to commit the crime, if it was the government  
5 who also persuaded him to commit the crime, and if he  
6 was not ready and willing to commit the crime before the  
7 government officials or agents first spoke with him.

8 On the other hand, if a defendant was ready and  
9 willing to commit the offenses charged against him in  
10 the indictment, and the government merely presented him  
11 with an opportunity to do so, that would not constitute  
12 entrapment. The entrapment defense must be considered  
13 independently as to each count charged, and the jury  
14 must render a verdict regarding entrapment for each and  
15 every count charged.

16 Your inquiry on this issue should first be to  
17 determine if Mr. Martin was induced by the government  
18 agent to commit the offense in question, and  
19 specifically if there is some credible evidence that the  
20 government agent took the first step that led to a  
21 criminal act. Inducement is defined as soliciting,  
22 proposing, initiating, broaching or suggesting that Mr.  
23 Martin commit each of the crimes charged. If you find  
24 there was no such evidence, there can be no entrapment,  
25 and your inquiry on this defense should end there.

1           If, on the other hand, you find some credible  
2 evidence that the government agent initiated the  
3 criminal acts charged in the indictment, the burden then  
4 moves to the government to prove beyond a reasonable  
5 doubt that Mr. Martin was not entrapped. Specifically,  
6 you must decide if the government has satisfied its  
7 burden to prove beyond a reasonable doubt that prior to  
8 first being approached by the government agents, Mr.  
9 Martin was ready and willing to commit the crime. If  
10 you find beyond a reasonable doubt that Mr. Martin was  
11 predisposed, that he was ready and willing to commit the  
12 offense charged, and merely was awaiting a favorable  
13 opportunity to commit them, then you should find Mr.  
14 Martin was not the victim of entrapment. On the other  
15 hand, if you have a reasonable doubt that Mr. Martin  
16 would have committed the offenses charged without the  
17 government's inducements, you must acquit Mr. Martin.

18           In determining this question of predisposition or  
19 willingness, you may consider evidence of the prior  
20 conduct of Mr. Martin including his criminal record, if  
21 any. You may consider such evidence, however, solely in  
22 connection with your determination of his predisposition  
23 or readiness to commit the offense with which he is  
24 charged.

25           You may not consider this evidence as proof that he



1 actually committed the offense with which he is charged,  
2 and you are free to find that he was not predisposed to  
3 commit the crime even if he had previously committed  
4 similar offenses.

5 The question of predisposition is an issue of fact  
6 for you to determine based on all of the evidence.

7 CONCLUSION

8 I caution you, members of the jury, that you are  
9 here to determine whether the government has proven Mr.  
10 Martin's guilt beyond a reasonable doubt. I remind you  
11 that the mere fact that Mr. Martin has been indicted is  
12 not evidence against him. Also, Mr. Martin is not on  
13 trial for any act or conduct or offense alleged [sic] in  
14 the indictment. Nor are you called upon to return a  
15 verdict as to the guilt or innocence of any other person  
16 or persons not on trial as defendant in this case.

17 You should know that the punishment provided by law  
18 for the offenses charged in the indictment is a matter  
19 exclusively within the province of the judge and should  
20 never be considered by the jury in any way in striving  
21 at an impartial verdict as to the guilt or innocence of  
22 the accused.

23 It is your duty as jurors to consult with one  
24 another and to deliberate. Each of you must decide the  
25 case for yourself, but only after an impartial

1 consideration of the evidence in the case with your  
2 other jurors. Do not hesitate to reexamine your own  
3 views and change your opinion if you think that you were  
4 wrong. Do not, however, surrender your honest  
5 convictions about the case solely because of the opinion  
6 of your other jurors or for the mere purpose of  
7 returning a verdict.

8 To return a verdict, it is necessary that every  
9 juror agree to the verdict. In other words, your  
10 verdict must be unanimous. The government has alleged  
11 that Mr. Martin engaged in a conspiracy to distribute  
12 cocaine, that he knowingly possessed a firearm in  
13 furtherance of a drug trafficking crime, and that he  
14 distributed a controlled substance on four occasions.  
15 In order to find Mr. Martin guilty of any of these  
16 charged offenses, you must find that the government has  
17 proven every element of the offense beyond a reasonable  
18 doubt and that the conclusion must be unanimous. You  
19 must do this for each count charged.

20 All right. At this time I'd like to offer my  
21 thanks to the alternate, Miss -- it's Miss Miller; is  
22 that right?

23 MR. GILMAN: Your Honor?

24 THE COURT: Yes.

25 MR. GILMAN: One tiny item with the

1 instructions. We just noted on page 28 there's just a  
2 tiny typo. It's correct elsewhere, but just in the  
3 middle paragraph, there's one sentence, and it says  
4 Count 1, but that should read Count 6 as it does  
5 elsewhere in the instruction.

6 THE COURT: I was going to have you come up --

7 MR. GILMAN: Ah.

8 THE COURT: -- forward in a second --

9 MR. GILMAN: I apologize.

10 THE COURT: -- and we would address any  
11 mistakes that were in it. So if you could hold on just  
12 a second.

13 MR. GILMAN: Thank you, your Honor.

14 THE COURT: All right, Ms. Miller, I really  
15 appreciate your service. Obviously the -- the person  
16 who's the alternate oftentimes has the worst of all jobs  
17 as jurors, that is, you get to listen to the evidence,  
18 you get to make an assessment of the evidence, but then  
19 you don't get to deliberate. So I appreciate your  
20 service, just in case you were needed.

21 At the close of the hearing, you can go back into  
22 the jury room. I'd ask that you not speak with the  
23 other jurors about the case at all, and you can get your  
24 things, and you will be excused.

25 All right. So, now, I am also going to assign

1 juror Julie Best to be the foreperson of the jury.

2       Upon retiring to the jury room, your foreperson  
3 will preside over your deliberations and will be your  
4 spokesperson here in court. A verdict form has been  
5 prepared for your convenience. If you are able to reach  
6 an agreement as to the counts contained in the  
7 indictment, you will have your foreperson record a  
8 verdict of guilty or not guilty. Your foreperson will  
9 then sign and date the verdict form, and you will  
10 return -- then return to the courtroom.

11       If, during your deliberations, you should desire to  
12 communicate with the Court, please put your message or  
13 question in writing signed by the foreperson and pass  
14 the note to the marshal who will bring it to my  
15 attention. I will then respond as promptly as possible  
16 either in writing or by having you returned to the  
17 courtroom so that I can speak with you.

18       I caution you, however, with regard to any message  
19 or question you might send, that you never -- that you  
20 should never state or specify your numerical division at  
21 the time.

22       You have been permitted to take notes during the  
23 trial for use in your deliberations. You may take those  
24 notes with you when you retire to deliberate. They may  
25 be used to assist your recollection of the evidence, but

1 your memory, as jurors, controls. Your notes are not  
2 evidence and should not take precedence over your  
3 independent recollections of the evidence. The notes  
4 that you took are strictly confidential. Do not  
5 disclose the notes to any other -- to anyone other than  
6 other jurors. Your notes should remain in the jury room  
7 and will be collected at the end of the case.

8 A copy of this charge will go with you into the  
9 jury room for your use.

10 Again, I appointed Juror Best to be foreperson.

11 All right. I am going to turn the husher on. You  
12 are free to stand and stretch here. I'd ask the lawyers  
13 to come up.

14 (The following was held at the bench.)

15 MR. GILMAN: Sorry about that, your Honor. I  
16 apologize.

17 Page 28.

18 LAW CLERK: Right there.

19 MR. GILMAN: Yes, just that one spot.

20 LAW CLERK: It should say Count 6.

21 THE COURT: Oh.

22 MR. GILMAN: We missed that. We apologize,  
23 your Honor.

24 THE COURT: All right. Now, are there any  
25 other mistakes that I made? Usually I read something

1 wrong. Sometimes I have not. Anyway.

2 MR. GILMAN: No.

3 MR. MATSON: I'm sorry. I will wait my turn.

4 THE COURT: Yes?

5 MR. MATSON: Yes. And unfortunately it was  
6 during the presumption of innocence, reasonable doubt  
7 and burden of proof. You read the sentence, "Reasonable  
8 doubt 'must' arise from a lack of evidence" instead of  
9 "may" arise.

10 THE COURT: Oh, all right. So what page is  
11 that on?

12 MR. MATSON: That's page three. It says  
13 "may."

14 THE COURT: Okay.

15 MR. MATSON: But that's one any lawyer will  
16 jump on.

17 THE COURT: Okay. I am going to straighten  
18 that out. So where -- where is that?

19 MR. MATSON: Bottom of page three, your Honor,  
20 second-to-last line. It says "may" arise, and you said  
21 "must."

22 LAW CLERK: You said "must."

23 THE COURT: Okay. I am going to straighten  
24 that out. Okay? Is there anything else?

25 MR. GILMAN: You already noted the page 29

1 should read "commission" as opposed to "commitment."

2 You already did that.

3 THE COURT: I did do that.

4 MR. GILMAN: Thank you, your Honor.

5 (The following was held in open court.)

6 THE COURT: All right. Two mistakes that I  
7 made. The first is on page three, the second line from  
8 the bottom, the charge is correct. Reasonable doubt may  
9 arise from lack of evidence. For some reason I said  
10 "must," and that's not correct. So reasonable doubt may  
11 arise from a lack of evidence.

12 Then on page 28 --

13 JUROR NO. 5: Our version is not correct?

14 THE COURT: Oh, no. Your version is correct.  
15 I read it wrong.

16 JUROR NO. 5: Oh, you read it wrong.

17 THE COURT: Right? And so I am correcting the  
18 record that I read it wrong.

19 JUROR NO. 5: Got it.

20 THE COURT: I read it wrong.

21 And then on page 28, at the end of the second full  
22 paragraph, just before Element 1, Commission of the  
23 Predicate, it reads Count 1. You see that? It's  
24 actually Count 6. Right? That's -- it should have been  
25 6. All right.

1 All right. Now, you are going to have the jury  
2 charge with you. There's one other thing that I just  
3 want to add. There may be times when one juror may want  
4 to leave the room to go to the bathroom or do something  
5 else. All deliberations should stop. So you should  
6 only deliberate when you are in the presence of everyone  
7 so that everyone knows what you are saying during the  
8 course of the deliberations.

9 All right. Are the marshals here to -- for the  
10 giving of the oath? Would the court security officer  
11 approach?

12 All right, the court security officers have been  
13 sworn, so --

14 (The Court and deputy clerk speak off the  
15 record.)

16 THE COURT: All right. United States versus  
17 Carl Martin is now given to you. The first thing that  
18 you might want to resolve is what would you like for  
19 lunch, so lunch will be brought in for you, and I think  
20 menus will be brought to you, and you can decide what  
21 you'd like to have for lunch.

22 So I am going to stay here on the bench and speak  
23 with the lawyers. So the case is now in your hands.

24 (The jury was excused after which the follow was held in  
25 open court at 12:13 p.m.)



1 THE COURT: All right. So I have a couple of  
2 questions. The first is the jury verdict form. We have  
3 drafted a verdict form which is essentially just a  
4 guilty or not guilty in regard to each of the six  
5 counts. I didn't ask for more precise answers to  
6 questions like inducement or predisposition, but it's  
7 made clear in the charge. It seemed to me that the most  
8 simple thing would be guilty or not guilty in regard to  
9 all counts.

10 Tell me if there's a request on anyone's part to  
11 have a more detailed verdict form?

12 MS. FULLER: It's fine from the government,  
13 your Honor, the way you intend to draft it.

14 THE COURT: Okay.

15 MR. MATSON: Yes. That's appropriate, your  
16 Honor.

17 THE COURT: Okay. All right. The second  
18 thing is that -- interesting with the use of so many  
19 electronic pieces of evidence, text messages, in  
20 particular. My view is that even though the text  
21 messages are introduced into evidence, those messages  
22 don't go to the jury unless they request them, you know.  
23 And I was thinking -- as the government indicated, Take  
24 a look at this whole book of text messages, 600 pages.  
25 You won't see anything in here which in any way relates

1 to threats or whatever.

2 I just always thought that the introduction of text  
3 messages, as you go through those text messages, is  
4 similar to testimony. In other words, you don't  
5 highlight the text messages by giving them to the jury  
6 unless they are asking for what are the text messages,  
7 i.e., what was the testimony in regard to what happened.  
8 But I think it's a fuzzy area in the law, frankly. It's  
9 not -- it's not a piece of evidence which is, you know,  
10 a constructive piece of evidence. It's like testimony.  
11 And so like testimony, you don't actually introduce  
12 those messages. But if they seek out those messages,  
13 then you bring them back and it's read like testimony.

14 So -- but I acknowledge that this is sort of a  
15 fuzzy area. I did actually think about, when I tried  
16 cases, there were no such thing as text messages, and  
17 this is just a totally different era. I mean, just  
18 totally different. And, quite frankly, a better one  
19 than what we did. But --

20 So tell me about whether we send in volumes of text  
21 messages or if they ask for them, then they will be  
22 brought back and we will read them as if it was  
23 testimony.

24 What's -- what is your wish at this point?

25 MS. FULLER: I'm not sure how the second

1 alternative would work simply because -- I don't know if  
2 they would -- you know, out of 600 pages of text  
3 messages, if they'd be able to come back in and say,  
4 Could we, you know, read document 1237 through 1240. Do  
5 you see what I am saying?

6 THE COURT: Right. Yeah, they would --

7 MS. FULLER: I'm not sure how to read that  
8 back.

9 THE COURT: -- come back and say, Well, you  
10 know, I'm -- we're considering, you know, let's say, the  
11 October 23rd. You know, what were the text messages?  
12 Can we have a reading of the text messages which  
13 preceded the October 23rd sale? And then you'd read  
14 them as if that was the testimony of a witness. I mean,  
15 if it's a testimony of a witness, that doesn't go into  
16 the jury room. They have to ask for it.

17 MS. FULLER: But these are exhibits. I mean,  
18 I think it's --

19 THE COURT: Well, they're -- but -- they're  
20 exhibits, but they're exhibits in the sense of  
21 testimony, in the replacement of testimony. Right? I  
22 think it's a -- I haven't dealt with this and so tell  
23 me. I mean, I have no -- certainly I have no objection  
24 to, you know, submitting all of these text messages as  
25 exhibits. It's just a massive amount of paperwork,

1 and --

2 MS. FULLER: My fear is, is that a rereading  
3 back of the text messages, let's say for the controlled  
4 buys, doesn't accurately capture what is in them. I  
5 think you need to, you know, to -- part of the  
6 government's argument, you heard it, was that Mr.  
7 Martin, you know, had -- over a period of time had kept  
8 asking Mr. Wood. You'd have to read back before the  
9 text messages right before October 23rd in order to  
10 understand that, you know.

11 And also my point about the 600 text messages, what  
12 is not in there. It doesn't exist in those 600 text  
13 messages, communications with Mr. Martin.

14 So just talking to Mr. Gilman, he indicated that in  
15 a trial before Judge Reiss, a recent trial before Judge  
16 Reiss, some text messages did go back --

17 Is that correct?

18 MR. GILMAN: That's correct.

19 MS. FULLER: -- to the jury room. I think  
20 it's an exhibit. I think the government's perspective  
21 is it's an exhibit. We -- they are entitled to see  
22 those exhibits.

23 THE COURT: Well, it technically has been  
24 introduced into evidence as an exhibit, and so  
25 ordinarily all exhibits go back to the jury, but it is

1 in the form of testimony. I mean, you are basically  
2 using that exhibit to track exactly what happened in  
3 place of oral testimony. And that's why it's confusing  
4 to me.

5 I am certainly willing to submit those because I  
6 think they are exhibits, and right now the rule is that  
7 all exhibits are introduced into evidence and delivered  
8 to the jury in the jury room. It would make it  
9 obviously quite simple for them to actually refer to  
10 those exhibits in discussing what happened in regard to  
11 each of the counts. I just think it's -- I think it's a  
12 fuzzy area, and I raise it. Okay?

13 MR. MATSON: Thank you, Judge.

14 My feeling on the subject would be it should either  
15 all go back or it should all sit out here and wait for a  
16 question. It is a new age, a digital age, with lots of  
17 things coming in, and it comes in not just as an exhibit  
18 but as testimony, evidence of a -- could be a common  
19 plan or state of mind or whatever, and it comes in, as  
20 the government did and I did, by bringing those certain  
21 texts --

22 THE COURT: Well, so what --

23 MR. MATSON: Sure.

24 THE COURT: -- your concern is that there  
25 would be some come in and some not come in.

1 MR. MATSON: Right.

2 THE COURT: So these would be all of the --  
3 all of them would go in.

4 MR. MATSON: They would either all go back to  
5 them or it should await for --

6 THE COURT: Okay.

7 MR. MATSON: -- them to ask a question.

8 THE COURT: All right. So let's send all of  
9 them back. I mean, they are exhibits. They have been  
10 accepted into evidence. The standard rule is they go  
11 back to the jury room. It's just -- it's -- the nature  
12 of those exhibits is a little different because it  
13 really is relied upon to prove the case, and so that  
14 those exhibits really take on a pretty significant role  
15 in the jury deliberations. But they have been accepted  
16 into evidence. They should be sent back. Okay.

17 MS. FULLER: Obviously, I think it's probably  
18 unsaid, but this doesn't go for the drugs or the guns.  
19 They are available down in my office --

20 THE COURT: Right.

21 MS. FULLER: -- should they want to see them  
22 at any time, but --

23 THE COURT: They're not -- right.

24 MR. MATSON: Then they will have more  
25 questions because they will --

1 THE COURT: Pardon me?

2 MR. MATSON: No.

3 THE COURT: I -- yeah, the guns and the  
4 drugs --

5 MS. FULLER: Right.

6 THE COURT: -- don't go back.

7 All right. Is there anything else we need to talk  
8 about at this point?

9 MS. FULLER: No, thank you, your Honor.

10 THE COURT: Okay.

11 MR. MATSON: No, thank you, your Honor.

12 THE COURT: It was a great job, and I really  
13 enjoyed the trial. Very good job. Okay.

14 MR. MATSON: Thanks.

15 MS. FULLER: Thank you.

16 (Court was in recess at 12:23 p.m.)

17 (The following was held in chambers at 5:35 p.m.)

18 THE COURT: All right. We have a note from  
19 the jury. It reads:

20 "Indictment. Typo on Count 2? Reference to Count  
21 8? Should this be Count 6?

22 "Thank you. Julie."

23 And we looked at the indictment that was submitted  
24 to them and it, in fact, had not been changed from 8 to  
25 6. So the simple answer to this question is, Yes, it

1 should be referring to Count 6. Right?

2 MS. FULLER: That's correct.

3 MR. GILMAN: Yes.

4 THE COURT: Okay. Then -- so I will write  
5 that out. And then I will write it right now so you can  
6 see it.

7 MR. GILMAN: Excuse me. I didn't hear it.

8 MR. MATSON: In terms of Count 6?

9 MR. GILMAN: Yes. Sorry.

10 MR. MATSON: Yes. Count 6.

11 THE COURT: Okay. So the next question is  
12 dinner. So we can have Lisa take this into the jury and  
13 ask them if they want dinner. It may be they are just  
14 waiting for this answer, because obviously there is no  
15 Count 8. Or they may want dinner.

16 So do you have any objection of me suggesting that  
17 we ask them do they want dinner?

18 MS. FULLER: No objection.

19 MR. MATSON: No.

20 THE COURT: Okay. So I will say: "Yes.  
21 Count 2 should refer to Count 6, not Count 8."

22 Okay? Okay. "Yes, Count 2 should refer to Count  
23 6, not Count 8." Okay.

24 MR. GILMAN: Thank you, your Honor.

25 MS. FULLER: Thank you.



1 (Brief pause.)

2 THE COURT: So I have just been notified that  
3 one book of exhibits -- that's of messages, text  
4 messages -- was not submitted to the jury. I had  
5 thought that it had not been offered into evidence, but,  
6 in fact, had been offered into evidence, and it has not  
7 been submitted to the jury. So we are going to submit  
8 it at this point. This is --

9 COURTROOM DEPUTY: A3.

10 THE COURT: A3, which consists of  
11 approximately 600 pages of text messages. Okay? Is  
12 that acceptable to everyone?

13 MS. FULLER: It is.

14 MR. MATSON: Yes. Thank you, Judge.

15 THE COURT: Okay.

16 (Chambers conference concluded at 5:43 p.m.)

17 (The following was held in chambers at 6:30 p.m.)

18 THE COURT: "We have questions of the law. If  
19 the gun is part of the currency of an illegal drug  
20 transaction, does that satisfy, in quote, possession of  
21 a firearm in furtherance of a crime? Based on the law,  
22 does the gun traded for drugs advance the commission of  
23 the illegal drug crime? Do you have advice? Opinion?

24 "Thank you. The foreperson."

25 I think it is very problematic for me to give them

1 legal advice in the middle of jury deliberations. So  
2 tell me what the government's position is and what the  
3 defendant's position is.

4 MS. FULLER: I'm --

5 THE COURT: Let's face it: If I was to say --  
6 if I was to answer their question, If the gun is part of  
7 the currency of an illegal drug transaction, does that  
8 satisfy possession of a firearm in furtherance of a  
9 crime? they're asking for my legal opinion. They're  
10 asking me to decide this case. Right?

11 MR. MATSON: Yeah.

12 THE COURT: Not a good thing. Not a good  
13 thing, but --

14 MS. FULLER: Yeah. No. I hear you,  
15 your Honor. I think everybody in this room knows the  
16 answer, the legal answer to that is yes. So I'm not --  
17 I have never been in the situation you have. So I'm not  
18 sure. Maybe we refer them back to, you know, part of  
19 the instruction that's relevant.

20 THE COURT: That's what I would say is that I  
21 can't give legal advice to the jury, that I have written  
22 a charge. You need to refer to the charge and make your  
23 own assessment based on that.

24 I think that's the only thing that --

25 MR. MATSON: I don't think I have anything to

1 add. I mean, that's the point of the jury instructions,  
2 right? And if -- obviously you know what defense  
3 thinks, but I'd also say if we made a record that we  
4 answer that question, this trial is under attack, no  
5 question.

6 THE COURT: Oh, yeah.

7 MS. FULLER: So the one thing I am wondering  
8 if the Court would consider -- I know these are the  
9 Court's jury instructions. I am wondering if what's  
10 hanging them up is the first sentence: To possess a  
11 firearm in furtherance of the crime means that the  
12 firearm helped forward, advance, or promote the  
13 commission of the crime. I am wondering if they are  
14 hung up on what the crime is.

15 THE COURT: No, I think they know what the  
16 crime is because they highlighted the fact that it was  
17 Count 8 as opposed to Count 6.

18 MS. FULLER: But did they say Count 8?

19 THE COURT: "If the gun is part of the  
20 currency of an illegal drug transaction, does that  
21 satisfy possession?"

22 MR. GILMAN: Yeah, I think it's a good  
23 instruction that the Court gave. Is it too much to have  
24 the Court refer them to the specific part of the  
25 instruction?

1 THE COURT: I just want to have them go back  
2 to the instruction.

3 MR. GILMAN: Okay.

4 THE COURT: I just think it would be  
5 extraordinarily problematic for me -- I mean, actually,  
6 I would turn to the both of you, and we could write  
7 another instruction, but that would be crazy at this  
8 point, together with the fact that probably they have  
9 resolved all of the other issues here, so -- I would  
10 think. Although maybe not. I don't know.

11 So I would suggest that we call them back in, and I  
12 will tell them that it's -- you know, this is the  
13 instruction, I can't give them legal advice, and they  
14 have to use the instruction. And just leave it at that.  
15 Is that acceptable to the defense?

16 MR. MATSON: Yes. That would be the  
17 suggestion of the defense.

18 THE COURT: And acceptable to the government?

19 MS. FULLER: Yes, your Honor.

20 THE COURT: Okay.

21 (Chambers conference concluded at 6:34 p.m.)

22 (The following was held in open court with the jury  
23 present at 6:39 p.m.)

24 THE COURT: Okay. I've -- the jury is in, and  
25 I have received a note from the jury, and I will read

1 the note.

2 "We have questions of the law. If the gun is part  
3 of the currency of an illegal drug transaction, does  
4 that satisfy, in quote, possession of a firearm in  
5 furtherance of a crime, close quote? Based on the law,  
6 does a gun traded for drugs advance the commission of an  
7 illegal drug crime? Do you have advice? Opinion?"

8 The difficulty is that I have given you the law in  
9 the charge, and that's what the law is to be applied in  
10 the case, and for me to give you any further legal  
11 advice, seems to me, would be inappropriate.

12 You have to say what is the charge and use that as  
13 the frame of reference, and I can't give you legal  
14 advice at this particular point.

15 So I'm just going to put it back on your plate.  
16 You need to take a look at the charge, follow the  
17 charge, apply the charge, and I can't give you any other  
18 legal advice at this point.

19 Okay, is that acceptable to both sides?

20 MS. FULLER: Yes, your Honor.

21 MR. MATSON: Yes, your Honor.

22 THE COURT: All right. I'm going to sit here  
23 just for a second, talk with counsel, and you -- has the  
24 food arrived yet?

25 JUROR NO. 3: No. Soon.

1 THE COURT: Has it arrived?

2 JUROR NO. 3: No. We have ordered it, but --  
3 we didn't order enough for everybody.

4 THE COURT: Okay.

5 (The jury was excused to further deliberate upon their  
6 verdict after which the following was held in open court  
7 at 6:41 p.m.)

8 THE COURT: Okay. All right. So is there  
9 anything else that we need to address at this point?

10 MS. FULLER: I don't think so, your Honor. Do  
11 you have a timing of how long you will let them  
12 deliberate? As long as they want or --

13 THE COURT: 10 -- 10 o'clock, nine o'clock,  
14 something like that.

15 MS. FULLER: Okay.

16 MR. MATSON: It's not like Happy Days, Judge?  
17 10 o'clock, 11 o'clock, around the clock.

18 THE COURT: Yes. So they'll have dinner and  
19 then we'll see if they resolve it. If not, you know, we  
20 will be talking about that later. I am going off and  
21 getting something to eat, so you are certainly free to  
22 leave for a little while as long as we know exactly  
23 where you're going so we can notify you if they come  
24 back.

25 MS. FULLER: Okay. Thank you.

1 MR. MATSON: Thank you.

2 THE COURT: Thank you.

3 (Court was in recess at 6:42 p.m.)

4 (The following was held in open court with the jury  
5 present at 9:02 p.m.)

6 THE COURT: Okay. Has the jury reached a  
7 verdict?

8 JURY FOREPERSON: Yes, your Honor.

9 THE COURT: Okay. Would you submit the form.  
10 (Brief pause.)

11 COURTROOM DEPUTY: "In United States of  
12 America versus Carl Martin, taking into account the  
13 facts of this case and the specific legal instructions  
14 given for each count, indicate whether you find Carl  
15 Martin guilty or not guilty.

16 "Count 1: Guilty.

17 "Count 2: Not guilty.

18 "Count 3: Guilty.

19 "Count 4: Guilty.

20 "Count 5: Guilty."

21 And "Count 6: Guilty."

22 Signature of the foreperson dated today.

23 Foreperson Best, is that the verdict as read --  
24 sorry. Excuse me.

25 Madam foreperson, is that the verdict of the jury?

1 JURY FOREPERSON: That is.

2 THE COURT: So say you all, ladies and  
3 gentlemen?

4 (The jury all indicate agreement with the  
5 verdict as read.)

6 THE COURT: Does either side wish the jury  
7 polled?

8 MR. MATSON: Yes, your Honor.

9 THE COURT: Okay. All right.

10 (The jury, upon each member being asked by the  
11 courtroom deputy, "Is that your verdict as read?"  
12 answered in the affirmative.)

13 THE COURT: I want to thank you for your  
14 service. This was a pretty long trial and a very  
15 intense trial, and I just noticed that you were just --  
16 you seemed to be absorbed in it, and you were very  
17 dedicated in fulfilling your responsibilities, and I  
18 really appreciate the service that you have provided.

19 Ordinarily I meet with the jurors, but in light of  
20 the late hour, I won't meet with you today. I just want  
21 to express the appreciation of all of us in the criminal  
22 justice system for your dedicated service, and at this  
23 point, we'll excuse you. Thank you very much.

24 (The jury was dismissed after which the following was  
25 held in open court at 9:06 p.m.)



1 THE COURT: All right. Does the defense want  
2 some time to file post-trial motions?

3 MR. MATSON: Yes, your Honor.

4 THE COURT: Do you need 30 days?

5 MR. MATSON: Yes, your Honor.

6 THE COURT: So we'll order that post-trial  
7 motions be filed in 30 days.

8 Now, the presumption of detention applies. What's  
9 the government's position as to detention or release?

10 MS. FULLER: We move for detention of the  
11 defendant.

12 THE COURT: Okay. And what's your response?

13 MR. MATSON: Your Honor, I understand it is  
14 now extraordinary to delay detention. However, Mr.  
15 Martin has been released for two years. Your Honor gave  
16 him an opportunity two years ago with the caveat, "Don't  
17 disappoint me," and Mr. Martin's not. He has not ever  
18 given a dirty urine. He has worked. He has supported  
19 his family. He has done everything this Court has asked  
20 him for two straight years.

21 He does not have a minimum mandatory. He was found  
22 not guilty of Count 2. The sentencing will be  
23 forthcoming, obviously. But I would ask that he not be  
24 held, your Honor, in light of his rather exceptional and  
25 extraordinary performance on pretrial release.

1           THE COURT: All right. I appreciate the fact  
2           that he has done well under supervision. There's no  
3           question that that will be very relevant at the time of  
4           sentencing. I took a look at 18 USC, section 3143,  
5           which is, of course, the statute in regard to detention  
6           or release pending sentence.

7           Essentially there is a change in the presumption.  
8           The defendant is to be detained unless, number one, the  
9           judicial officer finds a substantial likelihood that a  
10          motion for acquittal or new trial be granted, and I  
11          can't find that. And second, an attorney for the  
12          government has recommended that no sentence of  
13          imprisonment be imposed on the person, and obviously the  
14          government has not requested that.

15          That's the first factor, and -- the first factor  
16          needs to be met; and then the second factor needs to be  
17          met as well: the judicial officer finds by clear and  
18          convincing evidence that the person is not likely to  
19          flee or pose a danger to any other person or the  
20          community.

21          The Court can't address that because the statute  
22          clearly says that -- that a judicial officer finds there  
23          is substantial likelihood that a motion for acquittal or  
24          new trial be granted, and I can't find that.

25          And I also -- also, the government has not

1 recommended a sentence of an alternative to  
2 imprisonment. So as a result, the presumption applies,  
3 and as a result, the Court will order that the defendant  
4 be detained at this point.

5 Okay. Thank you.

6 (Concluded at 9:09 p.m.)

7 \*\*\* \*\* \*\*\*

8  
9  
10 C E R T I F I C A T I O N

11 I certify that the foregoing is a correct  
12 transcript from the record of proceedings in the  
above-entitled matter.

13 

14 July 9, 2023  
15 Date

Anne Nichols Pierce